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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER

vs.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

PETITION FOR CERTIORARI FILED AUGUST 28, 1952
CERTIORARI GRANTED NOVEMBER 24, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER,

vs.

ROY W. CASS, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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2. The right of the City and County of Denver to tax personal property of certain army personnel and the right of such personnel to be exempt from such taxation under Federal enactment and the construction of said enactment are the principal questions submitted for the determination of this Honorable Court, and it is in the interest of the public as well as both parties that said questions be decided so soon as conveniently may be.

/s/ MAX M. BULKELEY,
Max M. Bulkeley,
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ,
Henry E. Lutz,
Assistant United States Attorney for the District of Colorado

Attorneys for Defendant in Error.

The above motion consented to and approved:

PIERPONT FULLER
ABE L. HOFFMAN
BURTON CRAGER

HEL:s

(File Endorsement Omitted)

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14 IN THE SUPREME COURT OF THE STATE OF COLORADO

Minute Entry—April 30, 1951

At this day comes the plaintiff in error by his counsel, Burton Crager, Esq. Henry E. Lutz, Esq., introduces Berryman Green, Esq., who is allowed to appear herein and argue for defendant in error. Whereupon this cause was argued by said counsel and submitted to the consideration and judgment of the Court.

By agreement, Mr. Justice Stone and Mr. Justice Moore may particiate without further oral argument.

IN THE SUPREME COURT OF THE STATE OF COLORADO

Motion for Reargument—Filed August 28, 1951

COMES Now the Defendant in Error herein by the United States Attorney for the District of Colorado, and respectfully moves the Court for a re-argument of this cause and in this behalf shows:

1. That this cause was argued to this Honorable Court on April 30, 1951 at which time only five members thereof sat.

2. That since April 30, 1951 two of those five justices so sitting have died.

3. That in consequence of said deaths, only three members of this Honorable Court, or a minority thereof, has had the benefit of oral presentation.

15 4. That the matters herein at issue are publici juris, involving the constitutionality of an Act of Congress of the United States, and hence is of vast importance both theoretically and as respects the practical application of the statute in question.

5. That this Honorable Court is the only appellate Court to which said issues have been submitted for determination.

/s/ MAX M. BULKELEY
MAX M. BULKELEY,
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
HENRY E. LUTZ,
Assistant United States Attorney for the District of Colorado

HEL/s

(File Endorsement Omitted)

IN SUPREME COURT OF COLORADO

Order—August 30, 1951

Upon consideration of the motion of the defendant in error, and also the certificate of service of a copy thereof on the plaintiff in error, the Court being well advised in the premises doth this day order that the motion for re-argument of this cause be, and the same is hereby, denied.

16 IN SUPREME COURT OF COLORADO

No. 16613

ROY W. CASS, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, *Plaintiff in Error*,

v.

CLAIBORNE DAMERON, *Defendant in Error*.

Error to the District Court of the City and County of Denver.
Hon. Henry S. Lindsley, Judge.

EN BANC. JUDGMENT REVERSED.

Mr. J. Glenn Donaldson,
Mr. Abe L. Hoffman,
Mr. Burton Crager,
Attorneys for Plaintiff in Error.

Mr. Theron Lamar Caudle, Assistant Attorney General,
Mr. Ellis N. Slack
Mr. Berryman Green } Special Assistants to the Attorney General,
Mr. Max M. Bulkeley, United States Attorney,
Mr. Henry E. Lutz, Assistant United States Attorney,
Attorneys for Defendant in Error.

MR. CHIEF JUSTICE JACKSON delivered the opinion of the Court.

Opinion—Filed May 12, 1952

17. The question presented in this case is whether, under section 574 of the Federal Soldiers' and Sailors' Civil Relief Act, Title 50, U. S. C. A., the personal tangible property of an officer in the Armed Forces of the United States, whose domicile is Louisiana, is subject to taxation by the City and County of Denver where it was located during the calendar year 1948 while the officer and his family resided in Denver and he was assigned to duty at the near-by Lowry Field Air Base.

The case arose when defendant in error, Dameron, after paying, under protest, taxes in the amount of $23.51 on a valuation of $460.00 to plaintiff in error, as manager of revenue and ex-officio treasurer of the City and County of Denver, sued to recover the amount paid. The facts are not in dispute. Major Dameron and his family resided in Denver all of the calendar year 1948, during which period he was assigned to Lowry Field Air Base, and the personal tangible property upon which the tax was paid was located in their Denver apartment. This property was in the Colorado jurisdiction when it was listed, valued, assessed, when the lien attached, the levy applied and the tax became due and payable.

There is no allegation or contention that a tax was paid in the state of plaintiff's domicile, Louisiana, or any other state, on the same property during that time. The trial court entered judgment in favor of plaintiff, and the treasurer of the City and County of Denver brings the cause here for review seeking a reversal of that judgment.

18 The pertinent provisions of the Soldiers' and Sailors' Civil Relief Act read as follows:

§ 574. "(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person *shall not be deemed* to have *lost* a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, *solely by reason of being absent* therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and *solely by reason of being so absent. For the purposes of taxation in respect of the personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is *not* a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed* to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing

19 contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of *personal property used* in or arising from a trade or business *if it otherwise has jurisdiction*. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) *the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That*

the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid." Italics supplied.

In the interpretation of a statute, a primary object is to determine the intention of the legislative body. The history of an act is often appropriate, and with that purpose counsel for Dameron attach to their brief, as Appendix B, the Senate Committee Report on Military Affairs respecting the 1944 amendment to the Soldiers' and Sailors' Civil Relief Act. That report reads as follows:

"The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

"The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of *double taxation* by being moved from one State to another under orders, it was intended that it should apply to personal property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of 'temporary residence' from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on *the same property in more than one State during* the same calendar year by reason of being moved under orders.

"Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned *should not be subjected to multiple taxation of personal property* by the various States and should be given the same protection as to personal property taxes

as is now provided in respect of income taxes.'" Italics supplied.

It would appear from the wording of this report that the main object of the 1944 amendment was the elimination of multiple taxation of military personnel.

Counsel for Dameron attach to their brief, as Appendix C, a list of the states of the Union, together with the state and local assessment dates for assessment of personal property, showing the varying dates upon which personal property is assessed in those states. We believe that this only emphasizes the fact that the Congress was merely intending the elimination of multiple taxation through the possibility of the same property being taxed in various states because of the owner being in several states during the course of the year.

There is nothing in the following letter from Henry L. Stimson, then Secretary of War, to the chairman of the committee of military affairs of the Senate, dated June 9, 1944, that alters this conclusion:

"The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was
22 one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942."

We feel confirmed in our position that the principal object of the amendment to the Soldiers' and Sailors' Civil Relief Act is to prevent the possibility of multiple taxation, after noting the following comment in the report of the House Military Affairs Committee referring to this same legislation:

"When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to *relieve persons* in the service from liability of *double taxation* by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

"The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes."

	Original	Print
Order of substitution	23	23
Order allowing certiorari	25	24

Filed August 28, 1952.

1 IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 16613

ROY W. CASS, Manager of Revenue and ex-Officio Treasurer of the City and County of Denver, *Plaintiff in Error,*

v.

CLAIBORNE DAMERON, *Defendant in Error.*

Writ of Error—Filed Dec. 15, 1950

IN THE SUPREME COURT OF THE STATE OF COLORADO

THE PEOPLE OF THE STATE OF COLORADO to the Clerk of the District Court of the City and County of Denver,

GREETING:

YOU ARE HEREBY COMMANDED to certify, as provided by the rules of said Supreme Court, a correct transcript of the record in a certain cause lately pending in said Court between Claiborne Dameron, plaintiff, and Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, Defendant, to the Supreme Court in the City of Denver within sixty days from the receipt of this writ, or within such additional time as said Supreme Court may order.

WITNESS the Honorable Benjamin C. Hilliard, Chief Justice of our Supreme Court, and the seal of said Court, in the City of Denver; this 15th day of December, A.D. 1950.

(SEAL)

O. E. RICKERSON
Clerk, Supreme Court,
By M. A. WHITE
Deputy Clerk

(File Endorsement Omitted)

2 IN THE SUPREME COURT OF THE STATE OF COLORADO

Summons to Hear Errors—Filed Dec. 21, 1950

TO THE DEFENDANT IN ERROR ABOVE NAMED, GREETING:

You are hereby notified that a writ of error has been issued out of our Supreme Court, directed to the District Court of the City and County of Denver, in a certain cause lately pending therein between Claiborne Dameron, Plaintiff, and Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, Defendant, to review the judgment of said Court, entered in said matter.

You are therefore hereby commanded to appear in the Supreme Court within ten days after service hereof and pay the docket fee of five dollars, and in default thereof the plaintiff in error will not be required to serve you with any papers required by the rules of this Court, and the Court may proceed to a determination of said writ of error ex parte.

WITNESS the Honorable Benjamin C. Hilliard, Chief Justice of our Supreme Court, and the seal thereof, affixed at my office in the City of Denver, this 15th day of December, A.D. 1950.

(SEAL)

O. E. RICKERSON,
Clerk, Supreme Court,

By M. A. WHITE,
Deputy.

As attorney of record for the within named defendant in error, I hereby acknowledge service of the within summons to hear errors, this 19th day of December, 1950.

MAX M. BULKELEY,
U. S. Dist. Atty. Colo.,
Attorney for Defendant in Error.

(File Endorsement Omitted)

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3 IN THE SUPREME COURT OF THE STATE OF COLORADO

Abstract of Record—Filed Dec. 28, 1950

Complaint—Filed April 1, 1949

"Comes now Claiborne Dameron, by the United States Attorney for the District of Colorado, and for cause of action against the above-named defendant alleges as follows:

I

That the plaintiff, Claiborne Dameron, is, and at all times mentioned, has been a member of the Armed Forces of the United States, being a commissioned officer of the United States Air Forces.

II

The defendant, Roy W. Cass, is the duly appointed, qualified and acting Manager of Revenue of the City and County of Denver, State of Colorado, and as such is the ex-officio Treasurer and ex-officio Assessor thereof.

III

During all of the calendar year 1948, plaintiff was, and at all times subsequent thereto, has been, and at the present time, as such commissioned officer aforesaid, is assigned to, and on duty at Lowry Field, an installation of the United States Air Forces in the State of Colorado, within and adjacent to the City and County of Denver. That perforce said orders of assignment, he is
4 obliged to temporarily, and during the continuance of said orders, be and remain in the City and County of Denver, State of Colorado, his address presently, and at all times pertinent hereto, being and having been the premises numbered Apartment 1, 1523 Willow Street, said City and County of Denver.

IV

That the plaintiff, during the whole of the calendar year 1948, and for many years prior thereto, was, and at the present time is, a citizen and a resident of the State of Louisiana, domiciled in the Town of Port Allen, in the Parish of West Baton Rouge, in the State of Louisiana, and remains a domiciliary of that town, parish, and state, and a citizen and resident of said state, in which during all of the period of time pertinent hereto the plaintiff was and is a qualified voter.

V

That on the 23rd day of April, A.D. 1948, the defendant, as said Manager of Revenue and, ex-officio assessor of the City and County of Denver, made or caused to be made against the plaintiff, upon the assessment books of his said office, in Schedule AA-PP-D5, an assessment for the year 1948 in the amount of $23.51, upon personal property owned exclusively by the plaintiff, and possessed and maintained by him in the City and County of Denver at said premises numbered Apartment 1, 1523 Willow Street, Denver, Colorado.

VI

That on the first day of April, 1949, the plaintiff, upon demand of the defendant, and solely for the purpose of avoiding the imposition upon himself and his property of penalties and interest, and to avoid seizure, impounding and sale of the personal property so assessed and owned exclusively by the plaintiff, and mentioned in allegation V of this complaint, paid to the defendant as ex-officio Treasurer of said City and County of Denver, under protest, the sum of $23.51 so then and theretofore claimed by said defendant to be due and payable as taxes on the personal property assessed to the plaintiff by said defendant, according to said Schedule AA-PP-D5, above mentioned for the year 1948, a copy of said protest is attached hereto marked Exhibit 1, and is made a part hereof.

VII

The plaintiff, by reason of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended by an Act of Congress approved by the President on July 3, 1944, is immune and exempt from State and local taxation of any character upon his personal property owned and maintained by him as aforesaid, and the collection of the taxes hereinabove described by the defendant as aforesaid is an unlawful interference with the plaintiff in the discharge of his duties to the military forces of the United States as a commissioned officer of the United States Air Forces, and is in contravention of the Act of the Congress of the United States hereinabove mentioned and contravenes Article VI, Clause 2, of the Constitution of the United States.

VIII

That the rights of exemption from personal property taxation under said Section 541, and the Constitution of the United States, as last hereinabove alleged, are common to a large number of other persons, to-wit, approximately two thousand persons in the City and County of Denver, Colorado, similarly situated and affected, and a still larger number of persons elsewhere situated in the State of Colorado. That hence this cause, and the matters herein involved, are publici juris, and their ultimate determination will fix and establish the rights of all of said persons, as well as those of the taxing authorities of the State of Colorado.

"WHEREFORE, the plaintiff prays judgment against said defendant as Manager of Revenue, and ex-officio Treasurer of the City and County of Denver, for the sum and amount of $23.51,

together with interest thereon as allowed by law, for costs, and such other relief as the facts may warrant."

Attached to the foregoing complaint was the following Exhibit "A", in words and figures as follows:

Exhibit "A" to Complaint

"HEADQUARTERS
LOWRY AIR FORCE BASE
AND
3415TH TECHNICAL TRAINING WING
DENVER, COLORADO

16 March 1949

"Mr. Roy W. Cass
Manager of Revenue and Ex-Officio Treasurer
City and County of Denver.
Denver, Colorado

Dear Sir:

There is herewith paid to you by myself, Claiborne Dameron, the sum of $23.51, in full payment of general taxes of the City and County of Denver for the year 1948, according to Schedule D 217, and on account of personal property owned exclusively by myself, as will appear in the above described assessment.

This payment is made to you under protest.

7 The conditions upon which this payment is protested are as follows:

1. That I am, and at all times during the year 1948, was a member of the Armed Forces of the United States, being a commissioned officer of the United States Air Force.

2. That I am, and at all times during the year 1948, was domiciled in the State of Louisiana, in the Town of Port Allen, in the Parish of West Baton Rouge, in the State of Louisiana, and a resident thereof.

3. That my present presence and my presence during the year 1948 in the State of Colorado was and is under, pursuant to and by virtue of military orders of the United States Air Force.

4. That under the provisions of Section 514 of the Act of Congress commonly known as the Soldiers' and Sailors' Relief Act of 1940, as amended by an Act of Congress approved July 3, 1944, the tangible personal property owned and possessed by myself in the State of Colorado during the year 1948 and at the present time is not subject to taxation by the City and County of Denver or by the State of Colorado, but to the contrary, is by the above-men-

tioned statute expressly exempted from taxation by the City and County of Denver, and State of Colorado.

"Very truly yours,

/s/ Claiborne Dameron
CLAIBORNE DAMERON
Major USAF"

8 **Answer—Filed April 15, 1949**

"Comes now Roy W. Cass, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver and for Answer and Defense alleges as follows:

FOR AN ANSWER AND FIRST DEFENSE:

1. Admits the allegations of paragraph 1 of the complaint.

2. Admits the allegations of paragraph 2 of the complaint.

3. Does not deny the allegations of paragraph 3 of the complaint but states that the premises therein mentioned, to-wit: Apartment No. 1, 1523 Willow Street, City and County of Denver, is not located upon lands reserved to the United States Government or in any wise owned or controlled by the United States Government but is privately owned premises located in and subject to the jurisdiction of the City and County of Denver and State of Colorado.

4. Does not deny the allegations of paragraph 4 of the complaint.

5. Admits the allegations of paragraph 5 of the complaint and further states that the personal property therein mentioned is entirely tangible property physically located within the City and County of Denver, as appears from the assessment schedule attached hereto as Exhibit "A" incorporated herein by reference and said tangible property was not caused or required to be brought into the City and County of Denver by reason of any Military Orders but was brought thereinto for the personal benefit and convenience of the plaintiff.

6. Does not deny the allegations of paragraph 6.

7. Denies the conclusions of law recited in paragraph 7.

8. As to paragraph 8, admits the issues raised in the complaint are common to a large number of persons who are members of the Armed Forces and who are present pursuant to Military Orders in the City and County of Denver and in the State

of Colorado, but denies that such persons are entitled to an exemption from personal property taxation on their tangible personal property physically existing within the City and County of Denver.

FOR SECOND AND FURTHER DEFENSE:

9. The complaint herein filed fails to state a claim upon which relief can be granted.

FOR THIRD AND FURTHER DEFENSE:

10. Shows unto the Court that the Constitution of the United States does not empower the Congress of the United States to enact any legislation exempting tangible personal property not owned by the United States nor any subdivision or public corporation thereof from taxation by the State of Colorado or the City and County of Denver when such property is physically present in said State or City and County.

FOR A FOURTH AND FURTHER DEFENSE:

11. Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A., Sc. 574), is contrary to the Constitution of the United States and is null, void and of no effect.

FOR A FIFTH AND FURTHER DEFENSE:

12. Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A., Sec. 574), does not expressly nor by implication divest the City and County of Denver or any state or municipality of the power to levy and collect a tax upon any privately owned tangible personal property physically present within the borders thereof irrespective of the domicile of the owners.

FOR A SIXTH AND FURTHER DEFENSE:

13. The purpose and intent of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended July 3, 1944 (Title 50, App. U.S.C.A. Sec. 574), is to preclude multiple taxation upon persons necessarily away from the states of their residence or domicile by reason of Military Orders while serving in the Armed Forces of the United States and not to render them or their property immune or exempt from taxation. But the tangible personal property of the plaintiff herein involved, being physically present in the City and County of Denver, would not be subject to taxa-

tion anywhere unless taxable in and by the City and County of Denver.

WHEREFORE, this Defendant, having fully answered, prays that this action be dismissed and that this Defendant have judgment for his costs herein expended."

Attached to the foregoing Answer filed with the District Court was Exhibit "A", being a tax schedule showing the tax assessment on the personal property owned by the plaintiff and agreed to have been located at 1523 Willow Street in the City and County of Denver, State of Colorado, for the year 1948. Said schedule shows an agreed net valuation on the personal property, most of which was household goods, of $460.00.

Minute Entry

On March 15, 1950 the Trial Court, having heard the arguments of counsel, took the case under advisement and ordered the parties to submit briefs.

11

Finding and Order—March 18, 1950

"At this day come the parties hereto by their attorneys, respectively.

And this cause having been heretofore submitted to the Court, and by the Court taken under advisement upon March 15, 1950, and the Court being now sufficiently advised in the premises, doth find the issues in favor of the plaintiff, Claiborne Dameron, and against the defendant, Roy W. Cass, Manager of Revenue and ex-officio Treasurer, City and County of Denver, in the sum of $23.51 with interest and costs.

And thereupon, it is ordered by the Court that judgment enter in accordance with the findings of the Court."

Whereupon, on the same day judgment was entered as follows:

"The Court having this day ordered that judgment be entered herein in accordance with the findings of the Court in favor of the plaintiff and against the defendant, now therefore;

It is the order of the Court that the plaintiff do have and recover of and from the said defendant, Roy W. Cass, Manager of Revenue and ex-officio Treasurer, City and County of Denver, the sum of $23.51 with interest, together with his costs in this behalf laid out and expended, to be taxed."

Minute Entry

On the same date the Court ordered that the necessity for filing a Motion for a new trial was dispensed with.

12 IN THE SUPREME COURT OF THE STATE OF COLORADO

Specifications of Points—Filed Dec. 28, 1950

1. The Trial Court erred in not ruling that the complaint filed below failed to state a claim upon which relief can be granted.

2. The Trial Court erred in not entering judgment against the plaintiff and in favor of the defendant.

3. The Trial Court should have entered judgment for the defendant instead of the plaintiff for the reason that Section 514 of the Soldiers' and Sailors' Relief Act of 1940, 54 Stat. 1179, as added by Soldiers' and Sailors' Civil Relief Act Amendments of 1942, 56 Stat. 769, and amended by Act of July 3, 1944, c. 397, 58 Stat. 722, when properly construed does not purport to exempt from state or local taxation the tangible personal property of a serviceman, such as the plaintiff here, during the time that his tangible personal property is physically present within the taxing jurisdiction.

4. The Trial Court should have entered judgment for the defendant instead of the plaintiff for the reason that if the Congressional Act referred to in Point 3 be construed as intending to exempt from state or local taxation, the tangible personal property of a serviceman such as the plaintiff here, during the time that his tangible personal property is physically present within the taxaing jurisdiction, then the said Congressional Act is to that extent unconstitutional under the United States Constitution.

Respectfully submitted,

J. GLENN DONALDSON
ABE L. HOFFMAN
BURTON CRAGER
Attorneys for Plaintiff in Error
353 City and County Building
Denver, Colorado.

---

13 IN THE SUPREME COURT OF THE STATE OF COLORADO

Motion to Advance—Filed Feb. 28, 1951

COMES Now the defendant in error above-named and respectfully moves the Court that this cause be advanced on its hearing docket to the earliest date conforming the convenience of the Court and in this behalf shows:

1. The questions in this cause are publici juris.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
AUG 28 1952
CHARLES ELMORE CROPLEY
CLERK

No. 302

In the Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, PETITIONER,

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO.

It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees leading up to the enactment of the amendment, is there any reference to granting exemption from taxation.

The Treasurer of the City and County of Denver does not claim that plaintiff, by virtue of his sojourn in Colorado under military orders, has lost his domicile in Louisiana. There has been no claim that he should pay a Colorado income tax for which residents of Colorado are liable. He is, in accordance with the federal statute, still deemed to be a resident of Louisiana. As to his *intangible* personal property, there is no contention that its situs should be deemed to be other than that in the State of Louisiana. But in respect to the personal tangible property of plaintiff, which has had a physical situs in Colorado during the whole of the taxable period as a result of which it appears it had no physical situs in Louisiana and was not subject to taxation in that state, we are of the opinion that the presumption accorded by the federal statute, that the situs was the State of Louisiana, has been effectively rebutted by the record; and there being no evidence to show that the domiciliary State of Louisiana has taxed the property, Colorado, as the state of actual physical situs, is free to levy and collect the tax for the period in question. It is obvious that, Louisiana having collected no tax on the property, Colorado is the only other state that can tax it. To deny Colorado this right turns the federal statute into an exemption.

24 The basic fact in the instant case is that multiple taxation has not been shown to exist; that the only state in which taxation has occurred for the calendar year 1948 on the property in question is the State of Colorado. There is nothing in the record to show that the taxing officials of the domiciliary State of Louisiana, or any other state of the Union, have undertaken to levy taxes or have in fact collected taxes on the personal tangible property involved in this case. The effect of the argument of counsel for Dameron is to reach a result whereby he would wholly escape taxation on his personal tangible property. We are confident that that was not the purpose of the statute.

Our use of the word "deemed" in the statute, as being the equivalent of "presumed," is not without support. In *Zimmerman* v. *Zimmerman*, 175 Ore. 585, 155 P. (2d) 293, the Oregon

Supreme Court applied such a meaning to the word "deemed," and then continued as follows:

"We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed* to have acquired a residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before words 'in consequence of' and that such constitutional provisions do not prevent the acquisition of domicil by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

25 In the instant case it will be noted that there is no need of supplying a modifying adverb, such as the word "merely," used in the Oregon case, to bring out the true meaning. It already is present in the phrase, "solely by reason of being absent therefrom [his domicile]."

Thus the Oregon court held that there was a rebuttable presumption that the sojourning soldier did not acquire a residence; but that the contrary could be shown from facts other than his mere presence in Oregon under military orders.

So in the instant case we interpret the statute, as applied to the presented facts, as though it reads as follows:

"For the purposes of taxation in respect of any person [Dameron], or of his personal property [household goods] * * * by any State, Territory * * * [City and County of Denver] such person [Dameron] shall not be deemed to have lost a residence or domicile in any State, * * * [Louisiana] solely by reason of being absent therefrom in compliance with military * * * orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * * [Colorado], while, and solely by reason of being so absent. For the purposes of taxation in respect of the personal property, * * * of any such person [Dameron] by any state, * * * [Colorado] of which such person is not a resident or in which he is not domiciled, * * *" his "personal property shall not be deemed to be located or present in or to have a situs for taxation in such state * * * [Colorado]" solely by reason

26 of his being absent from Louisiana and stationed in Colorado in compliance with military orders."

We have repeated the phrase, "solely by reason of his being absent from Louisiana and stationed in Colorado in compliance with

military orders," because that is the sort of person the statute is describing when it refers, in the last sentence, to 'the personal property of any *such* person.

A serviceman's personal tangible property is not deemed to be located in Colorado *solely* by reason of its Colorado situs and of his being absent from his Louisiana domicile. There must be some additional factor if that presumption is to be upset. That something else, in the instant case, is the complete failure to show that the property has been taxed in the state of domicile. We believe the second paragraph of the amendment indicates the legislative intent that taxes in the state of domicile shall have been paid before the inferences of situs of personal tangible property can be brought into play. Thus sub-section B, having indicated that the term "taxation" shall include the additional items of licenses, fees or excises imposed in respect to motor vehicles or the use thereof, immediately makes it clear that those items must be paid before they can be included within that term.

Because of our views as to the scope and limitations of the Soldiers' and Sailors' Civil Relief Act as applied to the facts in this case, and also because of our views that the application of the act in the instant case does not conflict with the taxing statute of the City and County of Denver and the State of
27 Colorado, it is not necessary that we consider the second question raised by counsel for the Treasurer of the City and County of Denver, namely: That the provision of the Soldiers' and Sailors' Civil Relief Act, here under discussion, is unconstitutional.

The judgment accordingly is reversed.

(File Endorsement Omitted)

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28 IN THE SUPREME COURT OF COLORADO

Judgment—May 12, 1952

This cause having been brought to this Court by writ of error to review the judgment of the District Court of the City and County of Denver, and having been heretofore argued by counsel and submitted to the consideration and judgment of the Court upon the matters assigned as constituting error in the proceedings and judgment of said District Court.

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, reversed, annulled and altogether held for naught; and that this cause be remanded to said District Court for further proceedings in harmony with the opinion of the Court on file.

It is further ordered and adjudged that said plaintiff in error do have and recover of and from said defendant in error its costs in this Court expended, to be taxed.

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29 IN SUPREME COURT OF COLORADO

Petition for Rehearing Filed May 26, 1952

Comes now the above-named defendant in error by his counsel, and respectfully petitions this Honorable Court for a rehearing of this cause, and in this respect submits:

1. That this Honorable Court misapprehended the meaning of that portion of Section 574 of the Soldiers' and Sailors' Civil Relief Act providing: "* * * and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * *," that such provision relates to one in military service under orders who "* * * is not a resident or in which he is not domiciled * * *."

2. That the agreed facts concede that the defendant in error was neither a resident nor legal domiciliary of Colorado (p. 14 r.).

3. That the statute creates the fiction of non-existence of personal property for purposes of taxation, and thus becomes an exemption statute.

4. That exemption statutes are entirely legal. (See *Carson* v. *Roane-Anderson Co.*, Vol. 96, No. 6 Law Ed. Advance Opinions of U. S. Supreme Ct., p. 198—issue of January 28, 1952).

5. That the statute in question, as finally passed, was and is much broader than the stated purpose of the Congressional Committee reports.

6. This Honorable Court misconceived the meaning of the second paragraph of said act by interpreting it to mean that taxes must have been paid on the personal property in question, in some other state, before the statute affords protection; said second
30 section relates only to motor vehicles.

7. This Honorable Court as in error in holding that the contention made on defendant in error's behalf (pp. 8-9 opinion) would allow any serviceman to obtain exemption of his physical tangible property by simply removing it beyond the boundaries of his domicile. The property would have to be with the serviceman at the place where he was serving under orders.

8. This Honorable Court is correct in stating that the word "exemption" does not appear in the act, but fails to accord equiv-

alent meaning to the fiction created of non-existence in the taxing jurisdiction of the tangible personal property of the serviceman.

The reconsideration of this cause is respectfully requested.

/s/ CHARLES S. VIGIL
Charles S. Vigil
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
Henry E. Lutz
Assistant U. S. Attorney for the District of Colorado

HEL/dh

(File Endorsement Omitted)

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31 IN SUPREME COURT OF COLORADO

Motion for Stay—Filed May 26, 1952

COMES Now the defendant in error above named by his counsel, and respectfully moves the Court that its mandate or remittitur to the District Court of the City and County of Denver be withheld and stayed until such time as the Supreme Court of the shall have finally passed on this case, and in this behalf represents and shows that it is the purpose and intention of this defendant in error, and within the time therefor allowed by law, and by proper appellate process to take this case to said Supreme Court of the United States; that the matters and things herein involved are publici juris, and affect the right and interests not only of a vast number of persons in the armed services of the United States, but also affect the rights and interests of a large number of state taxing authorities; that it is in the public interest that this case be passed upon by the ultimate authority having jurisdiction thereof.

/s/ CHARLES S. VIGIL
Charles S. Vigil
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
Henry E. Lutz
Assistant U. S. Attorney for the District of Colorado

HEL/dh

(File Endorsement Omitted)

32

IN SUPREME COURT OF COLORADO

Order—June 2, 1952

Upon consideration of the motion of the defendant in error for a rehearing in this cause, the Court being well advised in the premises, doth this day order that said motion be, and the same is hereby, denied.

IN SUPREME COURT OF COLORADO

Order—June 5, 1952

Upon consideration of the motion of the defendant in error, it is this day ordered that remittitur herein be withheld and stayed pending appeal of defendant in error to the Supreme Court of the United States.

Clerk's Certificate to foregoing transcript omitted in printing.

U.S. GOVERNMENT PRINTING OFFICE 1952—222232/P.O. 343



In the Supreme Court of the State of Colorado

No. 16613

ROY W. CASS, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER, PLAINTIFF IN ERROR

v.

CLAIBORNE DAMERON, DEFENDANT IN ERROR

Error to the District Court of the City and County of Denver, State of Colorado. Honorable Henry S. Lindsley, Judge.

Order of substitution

October 2, 1952

Come now the Plaintiff in Error by his counsel and the Defendant in Error by his counsel, and jointly move the Court to enter its Order substituting A. S. Brodhead, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, in the place and in the stead of Roy W. Cass, former Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver.

Upon consideration whereof, it is hereby ordered that A. S. Brodhead, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, be, and he hereby is, substituted as Plaintiff in Error in this cause in the place and stead of Roy W. Cass, former Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver.

By the Court:

[SEAL]

WILLIAM S. JACKSON,
Chief Justice.

In Department, October 2, 1952.

A true copy.

Attest:

GEORGE A. TROUT,
Clerk of the Supreme Court of the State of Colorado.

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25

Supreme Court of the United States

No. 302, October Term, 1952

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

Order allowing certiorari

Filed November 24, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Colorado is granted. Case transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1952



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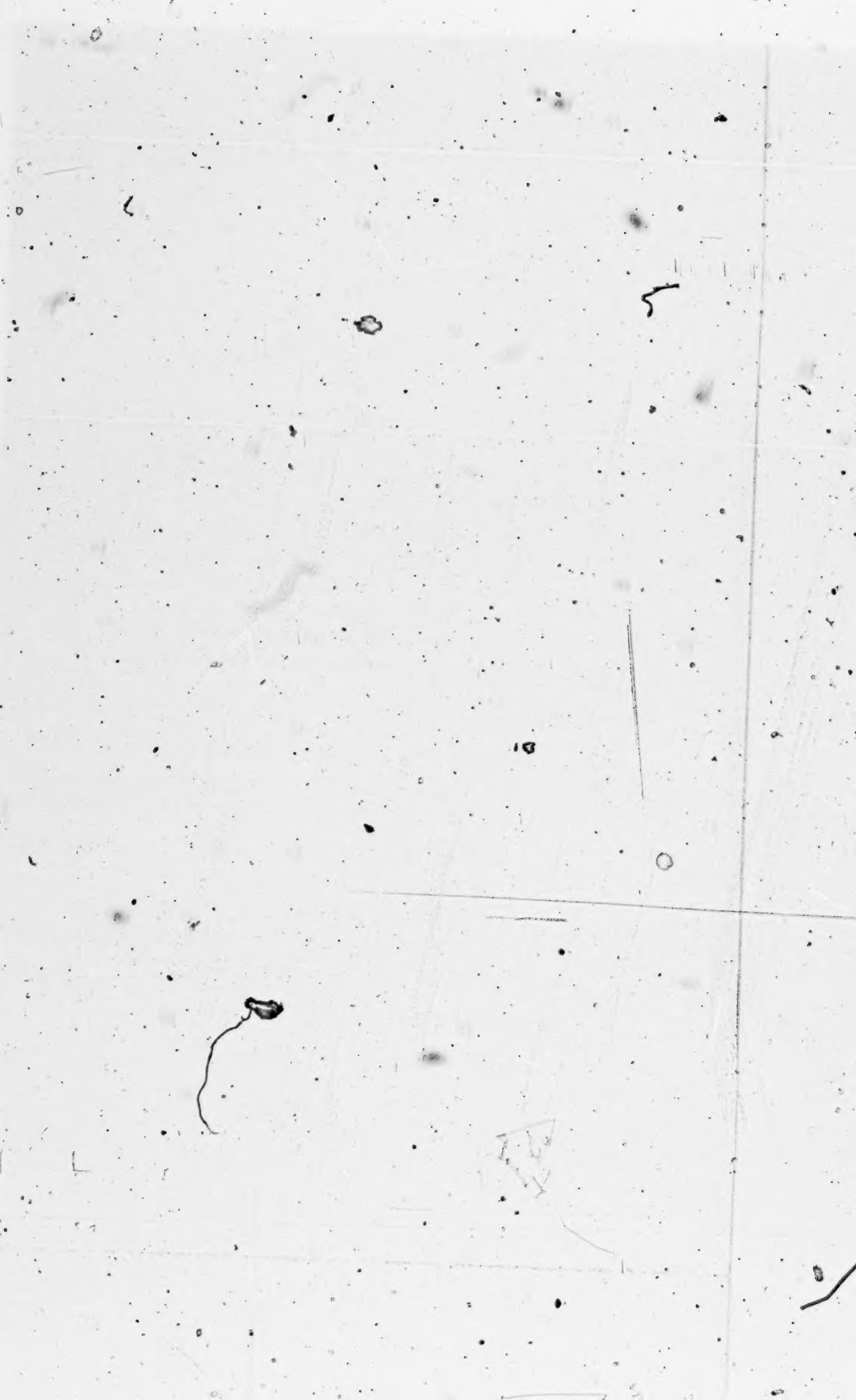
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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

The Acting Solicitor General, on behalf of Claiborne Dameron, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Colorado entered on May 12, 1952, reversing a decision of the District Court of the City and County of Denver entered on March 18, 1950.

OPINIONS BELOW

The District Court of the City and County of Denver rendered no opinion. The amended opinion of the Supreme Court of Colorado (R. 12) is not

yet officially reported, but is unofficially reported in 244 P. 2d 1082.

JURISDICTION

The judgment of the Supreme Court of Colorado was entered on May 12, 1952. (R. 18.), A petition for rehearing was denied on June 2, 1952 (R. 21), at which time the court promulgated its amended opinion in the case (R. 12). The jurisdiction of this Court is invoked under Section 1257(3), 28 U. S. C.

QUESTION PRESENTED

Whether, under Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended by the Act of July 3, 1944, the tangible personal property of the petitioner, a domiciliary of Louisiana and a member of the armed forces of the United States present in the State of Colorado solely because of his military orders, is subject to taxation by the City and County of Denver in which the personal property is located.

STATUTE INVOLVED

The pertinent portion of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and excerpts from S. Rept. 959, 78th Cong., 2d Sess., are set forth in the Appendix, *infra*, pp. 12-16.

STATEMENT

The material facts are undisputed. As alleged in the complaint (R. 2-6) and admitted by the answer (R. 6-8), they are as follows:

The petitioner is, and at all times material to this case has been, a commissioned officer of the United States Air Force. The respondent is the duly appointed, qualified and acting Manager of Revenue of the City and County of Denver, State of Colorado, and as such is Ex-officio Treasurer and Assessor. (R. 3.)

During all of the year 1948, the petitioner was a commissioned officer of the United States Air Force assigned to duty at Lowry Field, an installation of the United States Air Force in the State of Colorado, in part within and in part adjacent to the City and County of Denver. In compliance with military orders, the petitioner temporarily was obliged to be and remain in the City and County of Denver, and during all times pertinent to this case he resided in rented quarters at Apartment One, 1523 Willow Street, which are privately owned premises located in the City and County of Denver. (R. 3.)

The petitioner, during the whole of the calendar year 1948 and for many prior years was, and at the present time is, a citizen and resident of the State of Louisiana domiciled in the town of Port Allen in the parish of West Baton Rouge. During all of such time, the petitioner has been a qualified voter in Louisiana (R. 3.)

On April 23, 1948, the respondent, as Manager of Revenue and Ex-officio Treasurer of the City and County of Denver, assessed a tax of $23.51 for the year 1948 upon tangible personal property owned exclusively by the petitioner and possessed

and maintained by him in the City and County of Denver at Apartment One, 1523 Willow Street. (R. 3.)

On April 1, 1949, petitioner, upon the demand of the respondent and solely for the purpose of avoiding the imposition upon himself and his property of penalties and interest, and the seizure, impounding and sale of his tangible personal property, paid to the respondent as Ex-officio Treasurer of the City and County of Denver under protest $23.51 claimed by the respondent to be due and payable as taxes on such tangible personal property. (R. 4.)

Petitioner instituted this action to recover the tax. (R. 4-5.) On March 18, 1950, the District Court of the City and County of Denver entered its judgment in favor of the petitioner and against the respondent. (R. 8.) The Supreme Court of Colorado reversed. (R. 18.)

REASONS FOR GRANTING THE WRIT

The Supreme Court of Colorado has held that states and their political subdivisions in which a member of the armed forces temporarily resides pursuant to military orders may tax his tangible personal property unless he has paid a tax on such property to the state of his domicile. The decision is clearly erroneous in that it fails to give effect to the express terms of Section 514 of the Soldiers' and Sailors' Civil Relief Act, as amended. If it is allowed to stand, it will expose members of the armed forces to the multiple taxation of personal

property which Congress specifically intended to avert.

1. In pertinent part, Section 514 of the Soldiers' and Sailors' Civil Relief Act (Appendix, *infra*, pp. 13-14) provides:

> Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or*

*present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district * * *.* [Emphasis supplied.]

In short, Section 514 provides, in clear and unambiguous language, that when one in the military service is absent from his state of domicile in compliance with military orders, no state other than the state of domicile shall impose a tax upon his personal property or income. The italicized clause, providing that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district" in which the serviceman and his property are present pursuant to his military orders, would seem to be dispositive of this case.

However, the Supreme Court of Colorado, looking to the stated Congressional purpose "that * * * military personnel * * * should not be subjected to multiple taxation of personal property" (S. Rept. 959, 78th Cong., 2d Sess. (Appendix, *infra*, p. 16)), and construing "deemed" to mean "presumed," held that Section 514 created only a conditional exemption from personal property taxes, the condition being proof that the state of the serviceman's domicile has levied and collected a tax on his personal property. The Colorado court assumed that the purpose of the statute was satisfied if the state in which a serviceman is temporarily present in compliance with orders does not

impose a tax on personal property which is already being taxed by the state of his domicile.

No such condition appears in the statute. Moreover, when Congress desired to condition a serviceman's exemption from taxation by a state to which he goes in compliance with orders upon payment of a tax to the state of his residence or domicile, it did so expressly in this same statute. Thus, paragraph (2) of Section 514 specifically provides that the serviceman's exemption from payment of local "licenses, fees, or excise imposed in respect to motor vehicles or the use thereof" is conditioned upon his payment of the license, fee, or excise required by the state of which he is a resident or in which he is domiciled. Contrary to the view of the Colorado court, the condition in paragraph (2) of Section 514 is not a general policy to be applied to the entire section, but emphasizes, instead, that Congress did not intend to so limit the exemption from taxation which is conferred in paragraph (1) of Section 514 involved here. Moreover, it is quite obvious that the condition in paragraph (2) was not inserted for revenue purposes, but rather to insure that servicemen's automobiles would be licensed somewhere for general law enforcement purposes.

Moreover, the decision of the Colorado court disregards the methods adopted by Congress to eliminate multiple taxation of the personal property of members of the armed forces. Congress sought to do this by providing that only the state

of the serviceman's permanent residence or domicile could tax his personal property.

The Senate Committee on Military Affairs, in reporting the 1944 amendment to the Act which added the specific exemption for personal property taxes stated (App. p. 16):

> * * * The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.[1]

The problem arises largely from the fact that personal property is assessed for taxation on different dates by the various states and local governments, with the result that a serviceman transferred from state to state could be taxed by each state in which he held his personal property on the assessment date. Congress sought to prevent this by providing that only the state of the serviceman's permanent residence or domicile can tax his personal property. In the instant case, for example, the decision of the Supreme Court of Colorado would prevent Colorado from taxing the petitioner if he is being taxed by Louisiana, his state of domicile; but if petitioner is taxed by Colorado and is then transferred to another state, the latter could tax him again since Colorado was not his state of domicile. Similarly, servicemen domiciled in states such as New York which have no personal property tax could be taxed by each state in which

[1] S. Rept. 959, 78th Cong., 2d Sess.

they and their property happened to be on the assessment day. Thus, the decision below exposes members of the armed forces to the very type of multiple taxation referred to in the Committee Report. Only an application of Section 514 in accordance with its express terms can effectuate its purpose.

2. This Court's decisions make it abundantly clear that exemptions from taxation expressly established by Congress for federal agencies and instrumentalities will not be whittled away by the courts.[2] It is equally clear that when Congress has provided such an exemption it will be interpreted by this Court in keeping with the broad purpose of protecting that which Congress sought to immunize from state taxation.[3] The Colorado court either felt that those principles were inapplicable, or disregarded them when, in effect, it amended the statute in order to place a restrictive and narrow interpretation upon it.

This Court has declared that the Soldiers' and Sailors' Civil Relief Act is to be read with friendly eyes (*Le Maistre* v. *Leffers*, 333 U. S. 1, 6), and that it "is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation" (*Boone* v. *Lightner*, 319 U. S. 561, 575). The rea-

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[2] *Pittman* v. *Home Owners Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95; *Maricopa County* v. *Valley Bank*, 318 U. S. 357, 361; *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232.

[3] *Pittman* v. *Home Owners Corp.*, *supra*; *Federal Land Bank* v. *Bismarck Co.*, *supra*; *Carson* v. *Roane-Anderson Co.*, *supra*.

soning of the Colorado court and the strained construction of the statute reached by that court seem not in harmony with either the broad purposes of the statute, the terms of the section, or the applicable principles of statutory construction.

Having construed the section as it did, the Colorado court stated that it would not consider the question of the constitutionality of the section.[4] It seems beyond question that Section 514 is valid. *Carson* v. *Roane-Anderson Co.*, 342 U. S. at 233-234.

3. The decision below is the first to construe Section 514. While the amounts involved in such personal property taxes are rarely large, the decision below stands as an invitation to other taxing authorities to impose similar taxes upon hundreds of thousands of members of the armed forces who are serving elsewhere than in their states of residence or domicile and who, under the decision, are without protection from multiple taxation. The instant case alone will determine whether such taxes may be assessed upon more than 2,000 servicemen who are temporarily stationed in the City and County of Denver pursuant to military orders, as well as upon a considerable number of servicemen stationed at other points in Colorado.

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[4] We think that the decision inferentially, at least, upholds the constitutionality of the provision in so far as it is given limited application to a serviceman who has paid taxes in his state of domicile, but whose personal property would, under the law of the military duty state, be regarded as taxable by that state.

CONCLUSION

The question is an important one and the decision below seems clearly in conflict with the federal statute. Accordingly, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.

AUGUST 1952.

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of *persons in the military service of the United States* in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

(50 U.S.C. App., 1946 ed., Sec. 510.)

Sec. 101. (1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act, shall signify Federal service on active duty with any branch of serv-

ice heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

* * * * *

(50 U.S.C. App., 1946 ed., Sec. 511.)

Act of July 3, 1944, c. 397, 58 Stat. 722:

* * * That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is amended to read as follows:

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession,

or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory,

possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

(50 U.S.C. App., 1946 ed., Sec. 574.)

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

(50 U.S.C. App., 1946 ed., Sec. 574 note.)

S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1-2:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property ac-

tually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

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No. 302

In the Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

OPINION BELOW

The District Court of the City and County of Denver, Colorado, wrote no opinion. The opinion of the Supreme Court of Colorado (R. 12–18), although not yet officially reported, is unofficially reported in 244 P. 2d 1082.

JURISDICTION

The judgment of the Supreme Court of Colorado was entered on May 12, 1952. (R. 18–19.) A petition for rehearing was denied on June 2,

1952. (R. 21.) The petition for a writ of certiorari was filed on August 28, 1952, and granted on November 24, 1952. (R. 24.) The jurisdiction of this Court rests on 28 U. S. C., Section 1257 (3).

QUESTION PRESENTED

Whether, where a serviceman domiciled in one state is assigned to military duty in another state, the latter state is barred by Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, from imposing a tax on the serviceman's tangible personal property located within its borders.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, are set forth in Appendix A, *infra*, pp. 31–34.

STATEMENT

The material facts are undisputed. As alleged in the complaint (R. 2–6) and admitted by the answer (R. 6–8), they are as follows:

Petitioner is, and at all times material to this case has been, a commissioned officer of the United States Air Force. Respondent is the acting Manager of Revenue and ex-officio Treasurer and Assessor of the City and County of Denver, State of Colorado. (R. 3.)

During all of the year 1948, petitioner was assigned to duty at Lowry Field, an installation of the United States Air Force in the State of

Colorado, in part within and in part adjacent to the City and County of Denver. In compliance with military orders, petitioner temporarily was obliged to be in Denver, and during all times pertinent to this case he resided in rented quarters at Apartment One, 1523 Willow Street, which are privately owned premises located in the City and County of Denver. (R. 3.)

During the whole of the year 1948 and for many prior years petitioner was, and at the present time is, a citizen and resident of the State of Louisiana domiciled in the town of Port Allen in the parish of West Baton Rouge. During all of such time, petitioner has been a qualified voter in Louisiana. (R. 3.)

On April 23, 1948, the Manager of Revenue and ex-officio Treasurer and Assessor of the City and County of Denver assessed a tax of $23.51 for the year 1948 upon tangible personal property (most of which was household goods) valued at $460, owned exclusively by petitioner and possessed and maintained by him in his apartment in Denver. (R. 3, 8.) The property was assessed under a statute of the State of Colorado (Appendix A, *infra*, p. 34) which provides that all personal property within that state on March 1 of any year is to be listed and assessed in the county where located at that time. On April 1, 1949, petitioner paid the tax under protest (R. 4), and thereafter instituted this action to recover the tax (R. 2-6). On March 18, 1950, the Dis-

trict Court of the City and County of Denver entered judgment for petitioner. (R. 8.) The Supreme Court of Colorado reversed. (R. 18.)

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Colorado erred:

1. In holding that the exemption provided by Section 514 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is subject to the condition that payment of taxes has been made in the state of the serviceman's domicile.

2. In not holding that the exemption from taxation by the state of the serviceman's military duty, provided by Section 514 (1) of the Act, is absolute, if the serviceman is present in that state, and absent from the state of his domicile, solely by reason of compliance with military orders.

SUMMARY OF ARGUMENT

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, provides, in plain and unambiguous terms, that a serviceman does not lose his residence or domicile in any state solely by reason of being absent therefrom in compliance with military orders; that he does not acquire residence or domicile in any state to which he happens to be assigned to duty, merely because of his presence in that state; and that his "personal property shall not be deemed to be located or present in or have a situs for taxation" in such a state. These provisions plainly precluded imposition of a personal property tax by the Colo-

rado authorities upon petitioner, an Air Force officer domiciled in Louisiana and stationed in Colorado under military orders.

The exemption granted by Section 514 from taxation of servicemen's personal property by any state other than that of domicile is absolute and unconditional. Regarding the statute as creating a "rebuttable presumption" as to the situs of personal property, the Supreme Court of Colorado held that the exemption is contingent upon a showing that the property has already been taxed in the state of the serviceman's domicile, and that since there was no such showing in this case, Colorado could properly levy a tax on petitioner's personal belongings situated within its borders. The error of this construction is demonstrated by the terms, purpose, and legislative history of the Act, as well as by the liberal construction to which an exemption statute of this type is entitled.

There can be no serious question as to the constitutionality of Section 514. It is a reasonable and valid exercise of the broad power of Congress to provide for the common defense and to raise and support an army and navy. This power includes authority to grant tax exemptions reasonably related to the performance of federal functions. Congress could properly undertake to protect servicemen from the harassments of multiple local taxation of their personal property, by restricting the power to tax such property to the state of domicile.

ARGUMENT

I

SECTION 514 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT PRECLUDES IMPOSITION OF DENVER'S PROPERTY TAX ON PETITIONER'S PERSONAL PROPERTY

It is common ground that petitioner, a domiciliary of Louisiana and an Air Force officer, was present in Colorado during 1948 solely by reason of his compliance with military orders. He was assigned to temporary duty at Lowry Field, an Air Force installation within and adjacent to Denver, and by reason of that assignment he temporarily resided in Denver. Denver's revenue manager assessed the tax in issue because a Colorado statute provides that all personal property within that state on March 1 of a given year is to be listed and assessed in the county where it is located at that time (*infra*, p. 34).

The short of our position is that Section 514 of the Soldiers' and Sailors' Civil Relief Act, as amended (*infra*, pp. 32–34), specifically bars this levy by providing, *first*, that a person in the military service does not acquire residence or domicile in a state in which he happens to be located while on military assignment, and, *second*, that his "personal property shall not be deemed to be located or present in or to have a situs for taxation" in such a state. The gist of the opposing position,

as set forth by the Supreme Court of Colorado, is that the tax exemption granted by Section 514, despite its preemptory and unlimited words, applies only where it is shown that the property has been taxed in the state of the serviceman's domicile, and that here there is no such showing.

Petitioner's reading of Section 514 is compelled, we believe, by its terms, purpose and legislative history, as well as by the liberal construction to which an exemption statute of this type is entitled. Nothing in the language or history of the statute warrants the conclusion that the exemption from taxation by the state of physical location depends on a showing by the serviceman that the property has already been taxed by the state of his domicile.

A. THE TERMS OF SECTION 514

1. Section 514 (*infra*, pp. 32–34) provides in pertinent part that [1] for the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, such person shall not be deemed [a] to have lost a residence or domicile therein "solely by reason of being absent therefrom in compliance with military or naval orders," or [b] "to have acquired a residence or domicile in * * * any other State * * * while, and solely by reason of being, so absent," and [2] that "for the purposes of taxation in respect of the personal property" of any such person by any State of which

such person is not a resident or in which he is not domiciled, "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * * ."

Section 514 thus provides, in clear and unambiguous language, that when one in the military service is absent from his state of domicile in compliance with military orders, no state other than the state of domicile shall impose a tax upon his personal property or income. The concluding clause—providing, "for the purposes of taxation in respect of the personal property" of a serviceman, that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State" in which the serviceman and his property are present, in obedience to his military orders—would seem in itself to be dispositive of this case. But Congress erected a further barrier against tax by the service state by providing that a serviceman's residence and domicile would not shift from state to state wherever he moved pursuant to military orders, and that he would not acquire a residence or domicile in any state solely by reason of his military service within its borders. Thus, under the statute, Colorado can base its claim to tax petitioner's property neither on the assertion that he became a Colorado resident or domiciliary nor on the fact that the property is physically located or has a "situs" in Denver. Since there is no other conceivable basis for the tax in question, it is com-

pletely barred by the literal terms of the federal Act.

The all-embracing reach of the personal property exemption is made even clearer by the provisions on income taxation in Section 514. It seems indisputable that Colorado's power to tax the serviceman's income is entirely eliminated. With a double provision comparable to that applicable to property taxes, the Act accomplishes this result by declaring (1) that a serviceman whose presence in the state is solely by reason of military orders shall not be deemed to have become domiciled in or a resident of the state, and (2) that compensation for military service of such a person (who is actually performing services within the state) shall not be deemed income for services performed within the state.

As noted by the Supreme Court of Colorado (R. 16), there has been no claim that petitioner should pay a Colorado income tax for which residents of Colorado are liable, and in view of the language of Section 514 any such claim would clearly be precluded, no matter what action was taken by the state of his domicile. So far as we can determine, no state has ever asserted that a serviceman must show the taxation of his income by the state of domicile before he may claim the benefits of Section 514. Indeed, some states (*e. g.*, Pennsylvania, Florida) impose no income tax, but so far as we know this fact has not been regarded as relevant to the application of Sec-

tion 514. Congress was undoubtedly aware that some states (*e. g.*, Delaware, New York) impose no personal property tax. As the legislative history shows (*infra*, pp. 20–21), it was the purpose of Section 514, as amended in 1944, to give servicemen the same protection from "multiple taxation" in respect of personal property taxes as was provided in respect of income taxes. Hence a serviceman domiciled in a state having no income or property tax would, under the Act, be entirely exempt from any such tax imposed by the state in which he is serving. But this benefit derives, not from any Congressional largesse, but from the laws of his home state. The Act does not, and was not intended to, alter in any way the tax provisions of the states in relation to their own residents. Congress left these provisions where it found them, its sole concern being that no state other than that of the serviceman's domicile should have the power to tax his income or personal property solely because in obedience to military orders he was stationed in such other state, and earned his income and kept his personal belongings there.

2. Nothing in the words of Section 514 supports the Supreme Court of Colorado in its holding that, with respect to property taxes, Congress merely created a "rebuttable presumption" against taxation of the tangible personal property of a serviceman located in the state solely because of military orders, and that the "rebuttable presumption"

would automatically be overcome by the serviceman's failure to prove that his home state taxed the property. The statute does not speak of "rebuttable presumptions", or of "presumptions" at all. True, it says that personal property shall not be "deemed" to be located in the non-domiciliary state, and the court below, reading "deemed" as equivalent to "presumed", regarded it as creating only a "rebuttable presumption". But "deemed" is most often synonymous with "regarded", "considered", or "adjudged", and creates what is in effect a "conclusive presumption", or, in other words, a substantive rule of law. See, *e. g., Douglas* v. *Edwards,* 298 Fed. 229, 237 (C. A. 2d), reversed on other grounds, 269 U. S. 204, 207; *United States* v. *Davis,* 50 F. 2d 903 (W. D. Mo.); *Leonard* v. *Grant,* 5 Fed. 11, 16 (C. C. D. Ore.); *In re Shepherd's Estate,* 183 Or. 629, 635–637, 194 P. 2d 425, 428–429. In using the phrase "shall not be deemed", the draftsmen of Section 514 simply chose one of the older, and perhaps more euphemistic, forms of speech for declaring that the state of service cannot tax the serviceman's personal property even though it is located in and has a situs in that state.

If, as respondent contends, Section 514 were read to mean that personal property of a serviceman on duty within a state shall not be "presumed" to be located or present in or to have a situs for taxation in that state, it would be ineffectual. For in every case to which the statute

has meaningful application, there is no question whatsoever as to the actual situs of the property. The statute was obviously not intended to create a "presumption" of fact as to the location of servicemen's property. The exemption from taxation granted by the Act is in terms absolute and not dependent upon any showing that the property is not actually in the state where the serviceman is serving. What the statute does is to provide, in familiar lawyer's language, that the service state can not, solely by reason of the presence within its borders of the serviceman and his personal belongings, levy a tax on such property. If, as the Supreme Court of Colorado thought, the statute creates only a "rebuttable presumption" that the "situs" of a serviceman's property is the state of his domicile, that presumption would inevitably be rebutted in every case by the inescapable concession that the property is in fact located in the state where the serviceman is on duty. Such a presumption would not be rebutted, as the court found it was in this case, by the serviceman's failure to show that he paid taxes on his personal property in the state of domicile. The latter fact has no reasonable relation to a presumption of factual "situs". Hence the construction given the Act by the court below is itself inconsistent with the notion that the statute creates only a "presumption" of fact as to the situs of servicemen's property. Section 514 is meaningful only if con-

strued, in accordance with its terms and purpose, as creating an absolute exemption (or, to put it another way, "conclusive presumption") against taxation of a serviceman's personal property by a state other than that of his domicile.

The state Supreme Court seems to have been led into error by its own rephrasing of the statute. The opinion (R. 17–18) takes modifying language from the first sentence of Section 514 (1) (*infra*, pp. 32–33)—paraphrasing it to read "solely by reason of his being absent from Louisiana and stationed in Colorado in compliance with military orders"—and then incorrectly applies the paraphrased language as a qualifying clause attached to the provision in the second sentence of Section 514 (1) (*infra*, p. 33) that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." The only condition actually included in the statute, however, as a part of the provision that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State," is that the property belong to "such person" as is described in the first sentence of Section 514 (1). The fact that petitioner in the present case is "such person" as is described in Section 514 (1), and the fact that the property was owned by him, are abundantly clear from the allegations of the complaint (R. 3), admitted by the answer

(R. 6), and in the courts below these facts were taken as established.

Finally, the Supreme Court of Colorado was likewise in error in construing (R. 18) the proviso contained in Section 514 (2) (b)[1] as indicating a legislative intent that property taxes in the state of domicile shall have been paid before the exemption of personal tangible property can be brought into play in the state of service. The court correctly observed that subsection (2) (b) defines the term "taxation" to include licenses, fees, or excises imposed in respect to motor vehicles or the use thereof, and that the statute makes it clear that those items must be paid at the domicile before they can be included within the "taxation" which is barred by Section 514 (1). However, the court failed to note two significant distinctions made by the draftsmen:—(1) while the section provides that the term "taxation" shall include licenses, fees, or excises imposed in respect to motor vehicles, the term "taxation" is specifically stated not to be limited to those licenses, fees, or excises; and (2) the pro-

[1] Section 514 (2) provides:

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid. [Appendix A, *infra*, pp. 33–34.]

viso to Section 514 (b) (2) does not speak of "taxation" but merely of "license, fee, or excise." By carving out of the broader term "taxation" a limited type of state exaction and, then, by providing that this limited type of exaction shall have been paid at home before it may be included within the term "taxation" as used in Section 514 (1), Congress indicated, we believe, an intent exactly contrary to that inferred by the Colorado Court. In specifically enumerating the types of exactions which must have been paid in the state of domicile, Congress plainly implied that such payment of other types of exactions need not be shown in order to claim exemption in the state of service.[2] The condition in paragraph (2) of Section 514 is, in its terms, not a general policy to be applied to the entire section, but emphasizes, instead, that Congress did not limit the general exemption from taxation conferred in paragraph (1) of Section 514 (Appendix A, *infra*, pp. 32–33).

B. THE LEGISLATIVE HISTORY AND PURPOSE OF SECTION 514

A potent factor in the Colorado court's decision seems to have been its belief that (1) to deny Colorado the right to tax here would grant peti-

[2] The reason why the provision relating to the payment of motor vehicle licenses, fees, or excises was included in the statute is not disclosed in the legislative history of Section 514, but a possible reason is that Congress adopted the provision as a means of insuring that servicemen's automobiles would be licensed somewhere for general law enforcement purposes.

tioner a complete exemption from personal property tax; and that (2) the purpose of Congress in enacting Section 514 was merely to prevent multiple taxation, and it did not contemplate or desire to grant any such complete exemption from taxation. In our view, the statute's history does not show that Congress had so restricted a purpose. On the contrary, the expressed legislative aim was to free servicemen from all income and personal property taxation in the different states in which they might be ordered to serve, leaving this as a subject-matter of taxation only by the state of domicile. Whether or not a state imposes an income or personal property tax on its domiciliaries temporarily absent on military duty is wholly unaffected by the Act. Similarly, the restrictions imposed by the Act upon the taxing power of states other than that of the serviceman's domicile are wholly unaffected by the extent, if any, to which the latter state taxes his property or income.

1. As originally enacted, the Soldiers' and Sailors' Civil Relief Act of 1940 contained no provisions such as are found in Section 514. That Section was added by Section 17 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769 (50 U. S. C. App., 1946 ed., Sec. 574), and was subsequently amended by the Act of July 3, 1944, c. 397, 58 Stat. 722, Sec.

1.[3] Section 514 was emergency legislation, originally with a specified time for its expiration.[4] At the time of its enactment in October 1942, this country was at war. Millions of civilians were being called into the military services, and military personnel were being transferred from place to place with great frequency. Congress had already provided in Section 500 of the Soldiers' and Sailors' Civil Relief Act of 1940 for limitations upon the right to sell for taxes a serviceman's real property while he was in the military service. The several states had varying laws respecting taxation of income and personal property.[5] In those states where taxes were imposed

[3] The 1944 Act added, among other things, the provision, of crucial importance in this case, that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district * * *" (see Appendix A, *infra*, p. 33).

Section 17 of the 1942 Act had added the portions of Section 514 providing (a) that "for the purposes of taxation in respect of any person, or of his property, income, or gross income", no residence or domicile would be gained or lost by virtue of military service, and (b) that military compensation would not be income earned within the state of service (see Appendix A, *infra*, pp. 32, 33).

The occasions of, and reasons for, the 1942 and 1944 amendments are discussed in this section of our brief, *infra*.

[4] The original expiration date was six months after the termination of the war. Thereafter, the Act was extended by the Selective Service Act of 1948, c. 625, 62 Stat. 604, 623, Sec. 14, until "terminated by subsequent Act of the Congress."

[5] In some states no tax is imposed on income (*e. g.*, Florida, Pennsylvania); in some states no tax is imposed on tangible personal property (*e. g.*, Delaware, New York).

on tangible personal property there were varying tax assessment dates extending over eight of the twelve calendar months (see Appendix C, *infra*, pp. 43–44), and varying taxable periods,[6] rates, valuations, and exemptions.

It was in this setting that Congressman Sparkman, on April 30, 1942, introduced in the House of Representatives H. R. 7029 (Appendix B, *infra*, p. 40) a bill to amend the Soldiers' and Sailors' Civil Relief Act of 1940 (among other things) with respect to taxation of servicemen by the different states. The bill was referred to the Committee on Military Affairs, and thereafter hearings were held.

The House Hearings on H. R. 7029, 77th Cong., 2d sess., held on May 22 and 25, 1942, contain the following significant statement by Major William D. Partlow, Jr., of the Judge Advocate General's Department, who appeared for the War Department (Hearings, p. 28):

> Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own. Under present State laws the

[6] For example, in Colorado the assessment date is March 1. However, the law of that state further provides that where property is brought into the state after March 1 and remains there until the succeeding March 1, the tax is to be prorated. Thus, it would appear that if property is brought into that state on February 1 and remains after March 1, it would be liable for thirteen months of taxes. See Appendix A, *infra*, pp. 43–44.

personal property and income of such persons may become liable for taxes in several States within the same calendar year.

The section is retroactive as to collection of such taxes to September 8, 1939, the date of the President's declaration of a limited emergency. Since that date military personnel have been transferred from place to place more often than in normal times.

The first proviso of this section—omitted through error from the bill as introduced—saves the right of such taxation to the State in which such person was legally domiciled or residenced immediately prior to the period of military service.

The House Committee rewrote the bill and reported it out as H. R. 7164. Though it departed materially from the wording of the original Sparkman bill (H. R. 7029), the Committee's report (H. Rep. No. 2198, 77th Cong., 2d Sess.) shows that there was no change in purpose or objective; in describing the bill's aim, the Committee used the exact language of the first two paragraphs of Major Partlow's statement on Section 17 of H. R. 7029 which we have quoted above (*supra*, pp. 18–19). H. R. 7164, as reported by the House Committee, was enacted into law (without pertinent amendment) as the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, c. 581, 56 Stat. 769, 777.

Section 514, as rewritten by the Committee and adopted by the Congress in 1942, used the word "property" (see p. 32, *infra*), but did not

define it or indicate more specifically (as had been done with respect to income taxation) that personal property taxes were barred. Subsequent to enactment of the 1942 amendments, questions were raised as to the effect of the new Section 514 with respect to personal property taxes, and proposed legislation was submitted to Congress in 1944 in order to clarify this matter. This proposed legislation was in the language of the old H. R. 7029, which had been introduced by Congressman Sparkman in 1942. Again, however, Congress did not adopt the language of the proposed legislation. The Committee reports agreed that the then existing law pertaining to state taxation of the personal property of servicemen present in the various states in compliance with military orders should be clarified, and that "the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes." S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1–2; and see H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2 (quoted in Appendix B, *infra*, pp. 36–38).

The Senate Committee stated in its report that, when Section 514 was added in 1942, it was intended to apply to personal property taxes as well as to income taxes, but that the provision, as added in 1942, did not prevent the state of "temporary residence" from taxing tangible

personal property "actually located" in such state so long as the tax did not depend on residence or domicile. The Committee recognized that a few states had taken the position that tangible personal property of military personnel who were only temporarily within their jurisdiction did not acquire a situs for taxation, but declared that it had also been held that Section 514 as then written did not affect the right of a state to assess personal property taxes on property "within its jurisdiction." The result, the Committee said, had been that servicemen found themselves "at times subjected to" personal property taxes on the same property in more than one state during the same calendar year "by reason of being moved under orders." (S. Rep. No. 959, quoted in Appendix B, *infra*, p. 37.)

The House Committee likewise referred to the need to amend Section 514 to clarify its application to personal property taxes, particularly in order to free servicemen from being "subjected to personal property taxes in more than one State by reason of being moved under orders." The House Committee added that the "purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes" (H. Rep. No. 1514, quoted in Appendix B, *infra*, pp. 39–40).

This legislative history thus convincingly shows that Congress, in the 1944 amendment, adopted

the view—referred to in the Senate Committee report, *supra*—of those states which had taken the position that tangible personal property of military personnel only temporarily within their jurisdiction does not acquire a situs for taxation, as against the position that Section 514 should not affect the right of a state to assess personal property taxes on property within its jurisdiction. Just as Congress had flatly established in 1942 that the state of service could not tax a serviceman's military pay, so in 1944 it made it indisputable that a soldier's personalty was beyond the jurisdiction of the state of service and that that state could not impose a levy on his personal property, tangible or intangible.[7]

2. Admittedly, Congress' main purpose was to avoid double or multiple taxation of servicemen, and not to free them of all taxes. But it chose to achieve this end by centering the power to tax in the state of the domicile and freeing the serv-

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[7] In the Eighty-first Congress, Senator Byrd introduced a bill (S. 415) to amend Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, "to permit States and political subdivisions thereof to impose taxes on the personal property of members of the armed services located in such States and political subdivisions." That bill was not reported out by the Senate Committee on Armed Services to which it had been referred. Undoubtedly, the purpose of this bill was to remove the clearly expressed bar to state and local taxation of personal property by the state of service. The legislative history of this bill is, at the least, suggestive of the Congressional intent underlying Section 514 (1), as amended in 1942 and 1944.

icemen from income or property taxation by any other state. This was a reasonable and practical solution in view of the nature of the problem, which arises largely from the fact that personal property is assessed for taxation on different dates by the various states and local governments (Appendix C, *infra*, pp. 43–44), with the result that a serviceman transferred from state to state could be taxed by each state in which he held his personal property on the assessment date. In the instant case, for example, double taxation would result if the personal property in question had been present in Mississippi on January 1, the assessment date in that state. Similarly, double or multiple taxation would result if a serviceman were successively present with his personal property in a given year in Wyoming (assessment date February 1, Kansas (assessment date March 1), Illinois (assessment date April 1), South Carolina (assessment date June 1), and New Jersey (assessment date October 1). Under the construction of the Act made by the court below, the personal property of servicemen domiciled in states, such as New York, which have no personal property tax could be taxed in each state where they and their property happened to be on the assessment date.[*] Thus, the decision below exposes members

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[*] The same would be true of a serviceman, like petitioner, who is domiciled in a state, like Louisiana, which taxes only personal property situated *within* the state. See *La. Civil*

of the armed forces to the very type of multiple taxation which Congress plainly sought to avoid. Only an application of Section 514 consonant with the legislative design to exclude all except the domiciliary state can effectuate Congress' purpose to do away with multiple taxation of servicemen.[9]

Code, Tit. 47, ch. 3, §§ 1951–1952. Compare Mass. G. L., chap. 59, § 2: "All property, real and personal, situated within the Commonwealth, and all personal property of the inhabitants of the Commonwealth *wherever situated*, unless expressly exempt, shall be subject to taxation." (Italics ours.) A similar provision is to be found in Rhode Island Gen. Laws 1938, chap. 29, Tit. VI, § 1.

[9] Even if it be true, as respondent asserts (Br. in Opp. p. 9), that a domiciliary state could not constitutionally tax a serviceman's tangible personalty located in another state, it would not justify the construction made by the court below, which in effect would result, contrary to the clear terms of the statute, in taxation exclusively by the state or states of physical situs, and not by the state of domicile. Congress was intent on preventing multiple taxation of a serviceman's property and income in the different states of potential service, and to attain this end adopted the simple and uniform rule that taxation can be imposed only by the domiciliary state. Congress could not have been unaware that, as a result, some property or income might escape taxation altogether.

We may also point out, in this connection, that the rule against taxation of out-of-state property is premised on the potential taxability of that property in the state of its location—a condition not present here, under our reading of Section 514. Moreover, the declaration in Section 514 that personal property shall not have "a situs for taxation" in the state of service may conceivably be construed as implying that the state of domicile retains power to tax, since under the normal rule it is only personal property with a taxable "situs" in another state which is exempt from levy by the

C. BROAD CONSTRUCTION OF FEDERAL TAX EXEMPTION STATUTES

It is significant that the statute here under construction is one which grants a federal exemption from state taxation. The Court has pointed out that such exemptions expressly provided by Congress for federal agencies and instrumentalities will not be whittled away by the courts. *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232; *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21, 31; *N. J. Ins. Co.* v. *Dir. of Tax Appeals*, 338 U. S. 665, 673, 675. Such exemptions are to receive a hospitable reading in keeping with the general purpose of the exemption, rather than a narrow and technical interpretation which would be confining in scope. *Pittman* v. *Home Owners' Corp., supra; Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95. The statutory protection should not "be frittered away" by restrictive readings. 314 U. S. at 99.

This principle of broad construction of federal tax exemption statutes is especially pertinent here. The Court has said that the Soldiers' and Sailors' Civil Relief Act "must be read with an eye friendly to those who dropped their affairs

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domiciliary state. See *Standard Oil Co.* v. *Peck*, 342 U. S. 382; *Northwest Airlines* v. *Minnesota*, 322 U. S. 292, 296; *Johnson Oil Co.* v. *Oklahoma*, 290 U. S. 158; *First Nat. Bank* v. *Maine*, 284 U. S. 312, 322–323; *Frick* v. *Pennsylvania*, 268 U. S. 473; *Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63; *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194. It may well be, therefore, that Louisiana would have power to tax the portion of petitioner's personalty involved in this case.

to answer their country's call" (*Le Mqistre* v. *Leffers*, 333 U. S. 1, 6), and that it "is always to be liberally construed to protect those" for whose benefit it was enacted. (*Boone* v. *Lightner*, 319 U. S. 561, 575). On the face of Section 514 (1), it is evident, we think, that Congress intended to accord to servicemen a wide freedom from state and local tax burdens, except in the state of domicile. This broad purpose, petitioner submits, is thwarted by the construction given the Act by the Supreme Court of Colorado in this case.

II

SECTION 514 IS CONSTITUTIONAL

In the court below, respondent challenged the constitutional power of Congress to bar the tax in question. That challenge was based upon two contentions: (1) that Congress has no power to exempt from State taxation tangible personal property not owned by the United States, its agents, or corporations; and (2) that the exemption provided by the section violates the Constitution because it forbids the exercise by the State of its sovereign power to tax when the exercise of that power would not interfere with a federal power or right. In our view, each of these arguments is invalid.

A. Congress was legislating in Section 514 under its broad constitutional power to provide for the common defense and to raise and support

armed forces. The Soldiers' and Sailors' Civil Relief Act followed upon the great defense mobilization of 1940 and was designed to help provide a strong army and navy. Section 100 of the Act (Appendix A, *infra*, p. 31) specifically declares that Congress was exercising its constitutional powers in order to free servicemen from the burdens and anxieties of certain civil liabilities "in order to enable such persons to devote their entire energy to the defense needs of the Nation". And the 1942 and 1944 amendments, involved in this case, were equally concerned with the attainment and support of a first-class fighting force. See *supra*, pp. 10, 16, 18, 19–24.

There can be no doubt of Congress' power to adopt servicemen's exemption legislation of this character, as an incident of its war and defense powers. The general power to provide tax exemptions reasonably related to the performance of Federal functions has been announced and confirmed in *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232, 233–234; *Pittman* v. *Home Owners' Corp.*, 308 U. S. 21, 32–33; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95, 102–104; *Maricopa County* v. *Valley Bank*, 318 U. S. 357, 361; *Board of Commissioners* v. *Seber*, 318 U. S. 705, 715, 719. These cases, and others, recognize and apply broad exemptions from state taxation granted by Congress to a variety of persons and agencies.

APPENDIX B

1. H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6:

* * * * * *

SECTION 17

Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxes in several States within the same calendar year.

The section is retroactive as to collection of such taxes to September 8, 1939, the date of the President's declaration of a limited emergency. Since that date military personnel have been transferred from place to place often than in normal times.

* * * * * *

2. S. Rep. No. 1558, 77th Cong., 2d Sess., p. 11, contains identical language.

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3. S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1–5:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act

as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the

same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

WAR DEPARTMENT,
Washington, June 9, 1944.

Hon. ROBERT R. REYNOLDS,
Chairman, Committee on Military Affairs, United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enactment of H. R. 4733, Seventy-eighth Congress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56 Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733

to the Committee on Military Affairs, House of Representatives, that there was no objection to its submission to the Congress.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

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4. H. Rep. No. 1514, 78th Cong., 2d sess., pp. 1-2:

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 541 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

[Here follows Sec. 514, as amended by the Act of July 3, 1944, *supra.*]

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal

In particular, the Court has expressly affirmed that congressional power to exempt from State and local taxation is not limited to the protection of its own agencies (*Pittman* v. *Home Owners' Corp., supra; Federal Land Bank* v. *Bismarck Co., supra*), but also embraces the protection of those with whom it contracts (*James* v. *Dravo Contracting Co.*, 302 U. S. 134, 160–161; *Carson* v. *Roane-Anderson Co.*, 342 U. S. at p. 234), as well as of its wards, such as the Indians (*Board of Commissioners* v. *Seber*, 318 U. S. 705). This controlling principle makes inescapable the conclusion that a similar exemption of the personal property of servicemen is a reasonable and valid exercise of congressional power. The relationship between Congress and a serviceman is certainly as substantial and close as that between Congress and a Federal contractor. See *United States* v. *Standard Oil Co.*, 332 U. S. 301, 305. As this Court has said, "* * * the power of Congress to create tax immunities does not turn on the nature of the agency." It "stems from the power to preserve and protect functions validly authorized." *Carson* v. *Roane-Anderson Co., supra*, p. 234.

B. Respondent will probably argue, as he did in the court below, that because Section 514 (1) forbids the exercise of the State's power to tax, it is invalid, since the tax would not be borne by

the Federal government or "interfere" with the federal power.

This is a false test, which never has been used. In each case in which Federal exemptions from State and local taxes have been before this Court and have been upheld, almost without exception,[10] the result has been, of course, to bar the State's power to tax. It is true that in most of those cases a Federal agency itself has benefited from the exemption, but by this Court's most recent decision in this field (*Carson* v. *Roane-Anderson Co.*, 342 U. S. 232), upholding an exemption construed to include contractors with the United States, the United States benefited only indirectly. The Indian cases are another prime example of a Federal exemption not directly designed to aid the Federal Government pecuniarily.

Since Congress has the power to exempt its contractors in a field of Federal activity, or the Indians, from State and local taxation, the power to exempt a serviceman and his property from such taxation cannot be doubted. In each case, the power to create the relationship carries with it the power to protect. *Pittman* v. *Home Owners' Corp., supra,* p. 33. The raising and maintaining of national armed forces is, of course, in the common interest and, like the serviceman, the public must share in the burdens resulting from

[10] *Baltimore National Bank* v. *Tax Commission*, 297 U. S. 209, is an exception.

war and defense emergencies. That Congress should desire to protect the serviceman from the harassment of multiple State and local taxes, along with other civil liabilities inducing anxiety, seems reasonable and desirable. In a real sense, the imposition of such burdens on our soldiers and sailors is an interference with the Federal functions of waging war and providing for the national defense—an interference which Congress could constitutionally seek to remove in the manner provided by Section 514.

CONCLUSION

The judgment of the Supreme Court of Colorado should be reversed.

Respectfully submitted,

WALTER J. CUMMINGS, Jr.,
Solicitor General.
CHARLES S. LYON,
Assistant Attorney General.
PHILIP ELMAN,
ELLIS N. SLACK,
BERRYMAN GREEN,
GEORGE F. LYNCH,
Special Assistants to the Attorney General.

JANUARY 1953.

APPENDIX A

1. Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

(50 U. S. C. App., 1946 ed., Sec. 510.)

SEC. 101. (1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this

Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

* * * * * *

(50 U. S. C. App., 1946 ed., Sec. 511.)

2. Act of July 3, 1944, c. 397, 58 Stat. 722:

* * * That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is amended to read as follows:[1]

"SEC. 514. (1) For the purposes of taxation in respect of any person, or of his *persona'* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a

[1] For the Court's convenience, we have italicized the provisions of Section 514 which were added to it by the 1944 Act. In other words, the unitalicized portions constitute Section 514 as it was enacted in 1942 and as it stood prior to the amendments made by the 1944 Act.

resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

"*(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise re-*

quired by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

(50 U. S. C. App., 1946 ed., Sec. 574.)

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

(50 U. S. C. App., 1946 ed., Sec. 574 note.)

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3. 4A Colorado Statutes Annotated (1935 ed.), c. 142:

SEC. 72. *Personal property listed and assessed March first.*—All personal property within this state on March first at twelve o'clock meridian in the then current year shall be listed and assessed in the county where it shall be on said March first.

SEC. 73. *Property brought into state after March first.*—If any personal property shall be brought into this state at any time subsequent to the first day of March for any purpose whatsoever, the owner thereof shall at once file a schedule thereof with the assessor of the county wherein such personal property shall be located, and such property may thereupon be listed by the assessor and assessed for the then current year. On failure of the owner to file such schedule he shall be subject to the penalties provided by the next succeeding section, and the assessor shall proceed to assess such property as provided by the said section; provided, that if any such

personal property so brought into the state after twelve o'clock noon on the first day of March in any year, shall not remain in the state until the next succeeding March first, such property may be valued for taxation at such portion of its full cash value as the time within the state bears to the full year.

* * * * * *

SEC. 197. *Tax on personal property a lien—Procedure to collect tax.*—(a) All taxes levied or assessed upon personal property of any kind whatsoever shall be and remain a perpetual lien upon the property so levied upon, until the whole amount of such tax is paid; and, if such property so taxed, or any part thereof, shall have been removed from the county wherein the same was taxed, or the treasurer cannot find or obtain the same or other property sufficient for the satisfaction of the tax, with interest, penalties and charges, or whenever for any reason the treasurer may deem action in court advisable for such purpose, the treasurer, to recover all taxes, penalties, interest and costs due from the taxpayer, may sue the person so taxed, before any court of his county having jurisdiction; and, upon the trial of any such cause, the tax roll or a certificate from the county treasurer of the amount of such tax, and that the same is not paid, shall be prima facie evidence that the amount claimed is due and unpaid, and judgment shall be given for the amount of such tax, together with all costs, interest and charges thereon, and execution therefor shall issue as in other cases, from which execution and sale there shall be allowed no exemption except such property as is exempt from taxation by the revenue laws of 1902.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

STATEMENT OF THE CASE

The material facts are not in dispute. As alleged in the complaint (R. 2-6) and admitted by the answer (R. 6-8), and as stated by the petitioner (P. 2-4), they are as follows:

The petitioner, a commissioned officer in the United States Air Force, is a citizen, resident and legal voter of the State of Louisiana. During all of the year 1948, the petitioner was assigned to duty at Lowry Field, an installation of the United States Air Force in the State of Colo-

property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

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5. H. R. 7029, 77th Congress, 2d Session

IN THE HOUSE OF REPRESENTATIVES

April 30, 1942

Mr. SPARKMAN introduced the following bill; which was referred to the Committee on Military Affairs

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A BILL

To amend the Soldiers' and Sailors' Civil Relief Act of 1940 to extend the relief and benefits provided therein to certain persons, to include certain additional proceedings and transactions therein, to provide further relief for persons in military service, to change certain insurance provisions thereof, and for other purposes.

* * * * *

SEC. 17. Article V of such Act is amended by adding at the end thereof the following:

"SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a) his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing con-

tained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

"(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

"(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

"(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a 'temporary residence'; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a 'temporary residence' only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

"(b) Personal property shall be deemed to have a 'temporary location' when a person in the military service has such property at his 'temporary residence' or when, on changing from one 'temporary residence' to another, he leaves it at a previous 'temporary residence'.

"(c) The term 'Federal area' means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States."

* * * * *

APPENDIX C

State and Local Assessment Dates for Assessment of Personal Property

[As taken from Commerce Clearing House state and local tax services]

State	*Assessment date*
Alabama	October 1
Arizona	Between 1st Monday in January and May 1
Arkansas	January 1
California	1st Monday in March
Colorado	March 1
Connecticut	October 1
Delaware	No personal property tax
District of Columbia	Personal property valued as of July 1; automobiles as of April 1
Florida	January 1
Georgia	January 1
Idaho	Second Monday in June
Illinois	April 1
Indiana	March 1
Iowa	January 1
Kansas	March 1
Kentucky	All property assessed as of July 1 except: Money, stock shares, notes, bonds, accounts or credits—January 1; first, second and sixth class cities July 1; 3rd class cities fixed by ordinance; 4th class cities—April 1; 5th class—Sept. 15.
Louisiana	January 1
Maine	April 1
Maryland	January 1 (Baltimore City Oct. 1)
Massachusetts	January 1
Michigan	April 1
Minnesota	May 1
Mississippi	January 1
Missouri	January 1
Montana	1st Monday in March—Automobiles Jan. 1
Nebraska	March 10
Nevada	March (1st Monday)
New Hampshire	April 1
New Jersey	October 1

State	Assessment date
New Mexico	January 1
New York	No personal property tax
North Carolina	January 1
North Dakota	April 1
Ohio	January 1
Oklahoma	January 1
Oregon	January 1
Pennsylvania	1st class counties 3rd Monday in September; 2nd class counties 1st Monday in September; 3rd class counties (not prescribed); 4th to 8th class—September 1. No fixed assessment dates in Pennsylvania, statutes prescribe dates by which assessment revisions must be complete.
Rhode Island	June 15
South Carolina	June 1
South Dakota	May 1 except as of March 20th in 1st, 2nd and 3rd class cities
Tennessee	January 10
Texas	Between January 1 and April 30
Utah	January 1
Vermont	April 1
Virginia	January 1
Washington	January 1
West Virginia	January 1
Wisconsin	May 1
Wyoming	February 1

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No. 302

In the Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

BRIEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO



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reserve argument thereon until such time as the matter may come before the Court upon appeal.

5. Hypothetical Case

The petitioner states in his brief that "the decision of the Supreme Court of Colorado would prevent Colorado from taxing the petitioner if he is being taxed by Louisiana, his state of domicile; but if petitioner is taxed by Colorado and is then transferred to another state, the latter could tax him again since Colorado was not his state of domicile." The first part of the statement is an admission that the decision of the Supreme Court of Colorado would prevent double taxation, which we have shown to be the purpose of the act. The second part states a hypothetical case. There is no question of double or multiple taxation in this case because the tangible personal property was in the State of Colorado during the entire year of 1948, and there was no contention that the property had been or could have been taxed by the State of Louisiana. Therefore, the question of whether a serviceman might be subject to double taxation is a purely hypothetical one and this Court should not decide this question in this case. *Champlin Refining Co. v. United States*, 329 U. S. 29.

Even if the objection as to double taxation should be good as to some servicemen under other circumstances, the petitioner is not in that class and therefore he cannot raise any question as to double taxation. *Heald v. District of Columbia*, 259 U. S. 114. In *Darnell v. Indiana*, 226 U. S. 390, the Court says:

> "The most serious aspect of this objection is that the statutes of Indiana do not make allowance if a

foreign corporation has property taxed within the state. But, as to this, it is enough to say that, however the statutes may be construed in a case of that sort, the plaintiffs in error do not show that it is theirs, and that, if they do not belong to the class for whose sake the constitutional protection would be given, if it did, they cannot complain on that ground."

Conclusion

The decision of the Colorado Supreme Court in this case merely holds that a serviceman's personal tangible property which has not been taxed in any other state, and which has been physically present in the State of Colorado during all of the year 1948, can be taxed for that year by the State of Colorado. This holding construes the pertinent section of the Soldiers' and Sailors' Civil Relief Act as prohibiting multiple taxation and not as providing for an exemption from all taxation. This construction is in accordance with the purpose which is stated by the sponsors of the act and a reasonable construction of the meaning of the words used, and no question of multiple taxation arises under the facts of this case. The question of the possiblility of multiple taxation in other cases is therefore a hypothetical question which cannot be decided in this case. Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

LEONARD M. CAMPBELL

JOHN C. BANKS

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Appendix

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888. 54 Stat. 1178:

Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcemnt of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

Senate Report No. 959, 78th Cong., 2d Sess.:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that pro-

vision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselvs at times subject to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

rado; and during all of the year 1948, the petitioner lived in a privately owned apartment in the City and County of Denver. The respondent levied a tax amounting to $23.51 upon the tangible personal property (household furniture and furnishings) owned exclusively by the petitioner and possessed and maintained by him at his apartment in the City and County of Denver during the whole of the year 1948. The petitioner paid the tax under protest (R. 5) and brought suit to recover the tax (R. 4-5). The trial court entered judgment in favor of the petitioner (R. 8), and the Supreme Court of Colorado by a unanimous decision reversed the trial court upon the reasoning that the purpose of the Soldier's and Sailor's Civil Relief Act was to prevent multiple taxation rather than to grant an exemption from all taxation; and that since the State of Louisiana had not taxed the tangible personal property which had its actual physical situs in Colorado, the State of Colorado could levy a tax on such property (R. 12-16).

REASONS FOR DENYING THE WRIT

We will answer the reasons given by the petitioner for the granting of the writ of certiorari in the same order that they are set forth in the petitioner's brief. The first contention of the petitioner is that the pertinent part of the Soldiers' and Sailors' Civil Relief Act, Section 514, in clear and unambiguous language, provides that no state other than the state of domicile shall impose a tax upon the personal property of a person in military service. This construction makes the statute an exemption statute rather than a statute to prevent multiple taxation, and the fact that the Supreme Court of the State of Colorado, by a

unanimous decision, has held contrary to the petitioner's contention, shows that the language of the statute is either ambiguous or that it clearly states the law as being contrary to the petitioner's contention. If the statute is not clear and unambiguous, then the court in construing the statute should consider the intention of Congress as evidenced, (1) by the legislative history; the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented[1]; the Committee Reports and the reports of the sponsors; and (2) by construing the meaning of the words to effectuate the intent of the lawmakers, such meaning to be arrived at not only by a consideration of the words themselves, but by considering the purposes of the law.[2]

1. LEGISLATIVE HISTORY

The Soldiers' and Sailors' Civil Relief Act of 1940 specifically stated that its purpose was to *suspend enforcement of civil liabilities*, in certain cases, of persons in the military service of the Unites States in order to enable such persons to devote their energy to the defense needs of the nation, and to this end the following provisions are made for the *temporary suspension* of legal proceedings and transactions which may prejudice the civil rights of persons in such service. ***." (Italics supplied. c. 888, §100, 54 Stat. 1178, appendix, *infra*, p. 16).

As so adopted in 1940, the act provided that the collection of income taxes should be deferred for not more than six months after termination of military service where ability

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[1] *United States v. Champlin Refining Company*, 341 U. S. 290.
[2] *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384.
[3] *Vermilya-Brown, Company, Inc., v. John Joseph Connell*, 335 U. S. 377.

to pay was materially impaired by reason of such service. c 888, §513, 54 Stat. 1190. The said act also provided that n sale of property to enforce the collection of taxes should b made except upon leave of Court and that the person i military service should have the right to redeem within si months after termination of service. c. 888, §500, 54 St 1186.

In 1942 the section of the act which is pertinent to this case was added, and later amended in 1944. As added in 1942 the section, omitting the portion in brackets, read as follows:

"(1) For the purposes of taxation in respect of any person, or of his [personal] property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the [personal property,] income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be

deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, [and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.] This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [October 6, 1942.]

[(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia, of which the person is a resident or in which he is domiciled has been paid.] c. 581, §17, 56 Stat. 777.

The purpose of adding this section 17 in 1942 was stated in House Report No. 2198, 77th Cong., 2d Sess., as follows:

"'Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions

through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxation in several states within the same current year."

The said section 514 of the Soldiers' and Sailors' Civil Relief Act was amended in 1944 by adding the portions set forth in brackets in the foregoing quotation of the 1942 amendment. c. 397, §1, 58 Stat. 722.

The purpose of this 1944 amendment was stated in Senate Report No. 959, 78th Cong., 2d Sess., pp. 1-2, (appendix, *infra*, p. 16) to be to "relieve persons in service from liability of double taxation" and so "that the military personnel concerned should not be subjected to multiple taxation of personal property by the various states and should be given the same protection as to personal property taxes as is now provided in respect of income taxes."

Likewise, it was stated in the report of the House Military Affairs Committee that the purpose of this 1944 amendment was to "relieve persons in the service from liability of double taxation by being moved from one state to another under orders." (Appendix *infra*, p. 18).

It will thus be seen that the purpose of the 1940 act was to *suspend enforcement of civil liabilities;* that the 1942 amendment was designed to *prevent multiple state taxation;* and that the 1944 amendment was adopted to *prevent multiple taxation* and to give the serviceman the *same protection as to personal property taxes as is provided in respect of income taxes.* Nowhere does it appear that Congress was

intending to *exempt* the serviceman from personal property taxes or to provide that he could escape all taxation by moving his personal property out of the state of his domicile. The act does not so state. If such had been the intention of Congress, it would have been easy to have stated specifically that personal property should not be subject to taxation in any state except the state of domicile.

After making this same general finding as to the purpose of the act, the Colorado Supreme Court made this statement:

> "It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees leading up to the enactment of the amendment, is there any reference to granting exemption from taxation." (R. 16).

It also should be noted that section 2 of this act, which was added in its entirety by the 1944 amendment (*supra* p. 5), stated that the term personal property should include motor vehicles and that the term taxation should include licenses and fees thereon, "provided that the license, fee, or excise required by the state * * * of which the person is a resident or in which he is domiciled has been paid." The wording of this section clearly shows that Congress was trying to prevent mutiple taxation.

If Congress had intended to give an exemption from taxation it would have exempted the personal property of a serviceman from all taxation in his state of domicile as well as in the state where he was located by reason of such service. The liability for taxes in the state of domicile would be just as worrisome to a serviceman as the liability for taxes in the state of temporary location, even though in both the serviceman might be entitled to a stay of the sale for taxes or an additional period of redemption after discharge, and if Congress had desired to give an exemption from taxation in the state of temporary location, where no tax was or could be levied by the state of domicile, it seems reasonable to think that they would have also exempted personal property from taxation in the state of domicile. It is therefore reasonable to say that they were attempting to do what was stated by all of the sponsors, i. e., to prevent multiple taxation.

2. Construing the Meaning of the Words Used.

Not only do the congressional reports show that the purpose of the act was to prevent multiple taxation rather than to grant exemption from taxation, but the wording of the act itself shows that the purpose was to prevent multiple taxation. The act provides that "for the purposes of taxation in respect to any person; or his personal property * * * by any State * * * such person shall not be *deemed* to have lost a residence or domicile in any state * * * *soley* by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in * * * any other state * * * while; and *solely* by reason of being, so absent. * * * For the purposes of taxation in respect of the personal property * * * of any such person by any state * * * of which such person is not a resident or

in which he is not domiciled * * * personal property shall not be *deemed* to be located or present in or to have a situs for taxation in such state * * *."

A statute ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant. *James v. Dubois*, 1 Harr. (N.J.) 285; *Hutchen v. Niblo*, 4 Blackf. 148; Opinion of the Justices, 22 Pick. 571; *United States v. Worner*, 4 McL. 463; *McHay v. Detroit and Erin Plank R.*, 2 Mich. 138; *United States v. Ragsdale*, 1 Hemp. 497; *Coffin v. Rich*, 45 Me. 507, 1 Mass. 324.

Why did Congress use the word "deem?" This Court has said that it is proper to construe the meaning of words to effectuate the intent, such meaning to be arrived at not only by consideration of the words themselves but by considering the purposes of the law. *Vermilya-Brown Company, Inc. v. John Joseph Connell*, 335 U. S. 377.

It is well settled that the situs of tangible personal property for purposes of taxation is the place where the tangible personal property is located, and that the state of domicile cannot tax such property when it is located in another state.[4] In the case of intangible property the maxim *mobilia sequuntur personam* is applied where intangible property is incapable of acquiring a situs separate from the domicile of the owner. However, the maxim has never been applied so as to prevent a state from taxing property having an actual situs in that state nor to permit the state of domicile to tax tangible personal property which has acquired an actual situs elsewhere.

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[4] *Union Refrig. Transit Co. v. Kentucky*, 190 U. S. 194; *Frick v. Pennsylvania*, 268 U. S. 473; *Curry v. McCanless*, 307 U. S. 357.

"The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicile of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance." 110 A. L. R. 715.

"It is generally agreed that the maxim, 'mobilia sequuntur personam,' is a fiction adopted for purposes of convenience in fields other than the taxation of the owner's property, and while it is still applicable in the field of taxation where it does not contravene fact, as where because of the intangible character of the property it is incapable of acquiring a situs separate from the domicile of the owner, it is inapplicable where, contrary to the principle it establishes, the property has acquired an actual situs in a jurisdiction other than the domicile of the owner.

"Consequently, notwithstanding the maxim, the power to tax tangible personal property which has acquired an actual permanent situs elsewhere has been denied to the domicil of the owner, as a matter either of constitutional law or of statutory construction; the general theory being that in such a case the domicile does not give protection, which is the consideration for the tax. *Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U. S. 194 * * *." 110 A. L. R. 709.

The word "deem" was no doubt used to prevent the use of this legal fiction of *mobilia sequuntur personam*. This word first appeared in the amendment of 1942 concerning the taxation of income, an intangible, and Congress no doubt meant that the doctrine of *mobilia sequuntur personam* should not be used so as to permit the double taxation of a serviceman's income. The amendment of 1944 used the same wording. Where the same word appears more than once in a statute, it is certainly reasonable to assume that Congress meant the word to have the same meaning. It also should be noted that the word "solely" is used in the act. The person shall not be deemed to have lost a residence or domicile *solely* by reason of being absent therefrom, or to have acquired a residence or domicile in another state, while, and *solely* by reason of being so absent.

The Colorado Supreme Court held that the word "deemed" meant presumed. This is the usual meaning given to the word by courts, some cases holding that it means a rebuttable presumption,[5] and others holding that it means a conclusive presumption.[6] Whether the presumption is rebuttable or conclusive is not important in this case because the word is used in the negative as "shall not be deemed" and also because of the word "solely" appearing later in the same sentence.

In *Zimmerman v. Zimmerman*, 175 Ore. 585, 155 Pac. (2d) 293, the court said:

> "We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed to have acquired a*

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[5] *Erickson v. Erickson*, 167 Ore. 1, 115 Pac. (2d) 152; *Williamson v. Winningham*, 199 Okla. 393, 186 Pac. (2d) 644.

[6] *Waldron v. People*, 84 Colo. 1; *Harder v. Irwin*, 288 Fed. 402; *United States v. Davis*, 50 Fed. (2d) 903.

residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before the words "in consequence of' and that such constitutional provisions do not prevent the acquisition of domicil by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

In the present case there is no need to supply a modifying adverb because of the phrase "solely by reason of being absent therefrom." "Solely" means without another; singly; alone. To say that for the purpose of taxation a person's property shall not be "deemed" to be located in a state of non-residence "solely" because the owner of the property is in that state, implies that the presence of the owner, together with other facts which gave tangible personal property a legal situs for taxation, would justify the imposition of such a tax. That is the present case.

3. Liberal Construction

We do not disagree with the petitioner's statement that "exemptions from taxation expressly established by Congress for federal agencies and instrumentalities will not be whittled away by the courts." However, that statement is based upon the false premise that in this case an exemption has been expressly established by this act of congress. Nor do we disagree with the general statements that this court has said that the Soldiers' and Sailors' Civil Relief Act should be read with friendly eyes and liberally construed to protect the man in military service. However, this Court has also said, in construing this Soldiers' and Sailors' Civil Relief Act, that "the judicial function to be

exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A *casus omissus* does not justify judicial legislation." *Ebert v. Poston*, 266 U. S. 548. The petitioner is asking the Court to construe the act so as to supply an exemption which is not stated in the act. He is asking the Court to construe the act so as to establish an exemption by judicial leglislation when the intention of the legislature was to prevent multiple taxation.

It is also a familiar rule of construction that since the taxing power is necessary to the state, acts limiting such power must be narrowly construed. *Christ Church v. Philadelphia*, 24 How. 300, 16 L. ed. 602; *Wiggins Ferry Co. v. City of East St. Louis*, 107 U. S. 365.

In *Bank of Commerce v. Tennessee*, 104 U. S. 493, the following statement appears:

> "That statutes imposing restrictions upon the taxing power of a State, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, is a familiar rule. Against the power nothing is to be taken by inference and presumption. Where a doubt arises as to the existence of the restriction, it is to be decided in favor of the State."

4. Constitutionality

Since the Colorado Supreme Court construed this section of the act as it did, the question of the constitutionality of the act was not necessary to the decision, and the Court therefore declined to consider it. We will therefore not argue that point in this brief on certiorari but will

As so adopted in 1940, the act provided that the collection of income taxes should be deferred for not more than six months after termination of military service where ability to pay was materially impaired by reason of such service. c. 888, §513, 54 Stat. 1190. The said act also provided that no sale of property to enforce the collection of taxes should be made except upon leave of Court and that the person in military service should have the right to redeem within six months after termination of service. c. 888, §500, 54 Stat. 1186.

In 1942 the section of the act which is pertinent to this case was added, and later amended in 1944. As added in 1942 the section, omitting the portion in brackets, read as follows:

> "(1) For the purposes of taxation in respect of any person, or of his [personal] property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purpose of taxation in respect of the [personal property,] income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, [and personal property shall not be deemed to be located or present in

or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.] This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [October 6, 1942.].

["(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia, of which the person is a resident or in which he is domiciled has been paid.] c. 581, §17, 56 Stat. 777.

The purpose of adding this section 17 in 1942 was stated in House Report No. 2198, 77th Cong., 2d Sess., as follows:

"Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxation in several states within the same current year."

The said section 514 of the Soldiers' and Sailors' Civil Relief Act was amended in 1944 by adding the portions set forth in brackets in the foregoing quotation of the 1942 amendment. c. 397, §1, 58 Stat. 722.

The purpose of this 1944 amendment was stated in Senate Report No. 959, 78th Cong., 2d Sess., pp. 1-2, (ap-

Report of House Military Affairs Committee (1944):

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as to income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

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No. 302

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, Petitioner,

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO.

BRIEF FOR RESPONDENT.

PEERLESS PRINTING CO., DENVER

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BRIEF FOR RESPONDENT.

STATEMEST OF THE CASE

The material facts are not in dispute. As alleged in the complaint (R. 2-6) and admitted by the answer (R. 6-8), and as stated by the petitioner (P. 2-4), they are as follows:

The petitioner, a commissioned officer in the United States Air Force, is a citizen, resident and legal voter of the State of Louisiana. During all of the year 1948, the petitioner was assigned to duty at Lowry Field, an installation of the United States Air Force in the State of Colorado; and during all of the year 1948, the petitioner lived in a privately owned apartment in the City and County of Denver. The respondent levied a tax amounting to $23.51 upon the tangible personal property (household furniture and furnishings) owned exclusively by the petitioner and possessed and maintained by him at his apartment in the City and County of Denver during the whole of the year

1948. The petitioner paid the tax under protest (R. 5) and brought suit to recover the tax (R. 4-5). The trial court entered judgment in favor of the petitioner (R. 8), and the Supreme Court of Colorado by a unanimous decision reversed the trial court upon the reasoning that the purpose of the Soldier's and Sailor's Civil Relief Act was to prevent multiple taxation rather than to grant an exemption from all taxation; and that since the State of Louisiana had not taxed the tangible personal property which had its actual physical situs in Colorado, the State of Colorado could levy a tax on such property (R. 12-16).

SUMMARY OF ARGUMENT

The pertinent part of Section 514(1) of the Soldiers' and Sailors' Civil Relief Act was adopted by an amendment which has as its purpose the prevention of multiple taxation. That this was the intention of Congress is plainly evidenced by the legislative history, by the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented, by the committee reports and the reports of the sponsors, and by construing the meaning of the words used to effectuate the intent of the lawmakers.

The decision of the Colorado Supreme Court in this case merely holds that a serviceman's personal tangible property which has not been taxed in any other state, and which has been physically present in the State of Colorado during all of the year 1948, can be taxed for that year by the State of Colorado. This holding construes the Soldiers' and Sailors' Civil Relief Act as prohibiting multiple taxation and not as providing for an exemption from all taxation. No question of multiple taxation arises under the facts of this case and the question of the possibility of multiple taxation in other cases is, therefore, a hypothetical question which cannot be decided in this case.

If the Soldiers' and Sailors' Civil Relief Act is construed as intended to exempt the tangible personal property of a serviceman from state and local taxation during the time such property is actually within the taxing jurisdic-

tion of such state, then the said Act is unconstitutional for the reason that any attempt by Congress to extend the mantle of governmental immunity from state taxation to such a remote matter as the private personal property of a serviceman would be an invalid invasion of the reserved constitutional powers of the states to levy and collect non-discriminatory taxes.

ARGUMENT

I. THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT PROHIBITS MULTIPLE TAXATION BUT IT DOES NOT EXEMPT PROPERTY OF A SERVICEMAN FROM ALL TAXATION BY STATES OTHER THAN HIS STATE OF PERMANENT RESIDENCE.

If a statute is not clear and unambiguous, then the court in construing the statute should consider the intention of Congress as evidenced, (1) by the legislative history; the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented [1]; the Committee Reports and the reports of the sponsors [2]; and (2) by construing the meaning of the words to effectuate the intent of the lawmakers, such meaning to be arrived at not only by a consideration of the words themselves, but by considering the purposes of the law.[3]

1. LEGISLATIVE HISTORY

The Soldiers' and Sailors' Civil Relief Act of 1940 specifically stated that its purpose was to *suspend enforcement of civil liabilities,* in certain cases, of persons in the military service of the United States, in order to enable such persons to devote their energy to the defense needs of the nation, and to this end the following provisions are made for the *temporary suspension* of legal proceedings and transactions which may prejudice the civil rights of persons in such service. ***." (Italics supplied. c. 888, §100, 54 Stat. 1178, appendix, *infra,* p. 35).

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[1] United States v. Champlin Refining Company, 341 U. S. 290.
[2] Schwegmann Brothers v. Calvert Distillers Corp., 341 U. S. 384.
[3] Vermilya-Brown Company, Inc., v. John Joseph Connell, 335 U. S. 377.

pendix, *infra*, p. 35) to be to "relieve persons in service from liability of double taxation" and so "that the military personnel concerned should not be subjected to multiple taxation of personal property by the various states and should be given the same protection as to personal property taxes as is now provided in respect of income taxes."

Likewise, it was stated in the report of the House Military Affairs Committee that the purpose of this 1944 amendment was to "relieve persons in the service from liability of double taxation by being moved from one state to another under orders." (Appendix *infra*, p. 36.)

It will thus be seen that the purpose of the 1940 act was to *suspend enforcement of civil liabilities;* that the 1942 amendment was designed to *prevent multiple state taxation;* and that the 1944 amendment was adopted to *prevent multiple taxation* and to give the serviceman the *same protection as to personal property taxes as is provided in respect of income taxes.* Nowhere does it appear that Congress was intending to *exempt* the serviceman from personal property taxes or to provide that he could escape all taxation by moving his personal property out of the state of his domicile. The act does not so state. If such had been the intention of Congress, it would have been easy to have stated specifically that personal property should not be subject to taxation in any state except the state of domicile.

After making this same general finding as to the purpose of the act, the Colorado Supreme Court made this statement:

> "It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees

leading up to the enactment of the amendment, is there any reference to granting exemption from taxation." (R. 16).

It also should be noted that section 2 of this act, which was added in its entirety by the 1944 amendment (*supra* p. 5), stated that the term personal property should include motor vehicles and that the term taxation should include licenses and fees thereon, "provided that the license, fee, or excise required by the state * * * of which the person is a resident or in which he is domiciled has been paid." The wording of this section clearly shows that Congress was trying to prevent multiple taxation.

If Congress had intended to give an exemption from taxation it would have exempted the personal property of a serviceman from all taxation in his state of domicile as well as in the state where he was located by reason of such service. The liability for taxes in the state of domicile would be just as worrisome to a serviceman as the liability for taxes in the state of temporary location, even though in both the serviceman might be entitled to a stay of the sale for taxes or an additional period of redemption after discharge, and if Congress had desired to give an exemption from taxation in the state of temporary location, where no tax was or could be levied by the state of domicile, it seems reasonable to think that they would have also exempted personal property from taxation in the state of domicile. It is therefore reasonable to say that they were attempting to do what was stated by all of the sponsors, i.e., to prevent multiple taxation.

2. CONSTRUING THE MEANING OF THE WORDS USED.

Not only do the congressional reports show that the purpose of the act was to prevent multiple taxation rather than to grant exemption from taxation, but the wording of the act itself shows that the purpose was to prevent multiple taxation. The act provides that "for the purposes of taxation in respect to any person, or his personal property * * * by any State * * * such person shall not be *deemed* to have lost a residence or domicile in any state * * * *solely* by reason

of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in * * * any other state * * * while, and *solely* by reason of being, so absent. * * * For the purposes of taxation in respect of the personal property * * * of any such person by any state * * * of which such person is not a resident or in which he is not domiciled * * * personal property shall not be *deemed* to be located or present in or to have a situs for taxation in such state * * * ."

A statute ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant. *James v. Dubois, 1 Harr.* (N.J.) 285; *Hutchen v. Niblo,* 4 Blackf. 148; Opinion of the Justices, 22 Pick. 571; *United States v. Worner,* 4 McL. 463; *McHay v. Detroit and Erin Plank R.,* 2 Mich. 138; *United States v. Ragsdale,* 1 Hemp. 497; *Coffin v. Rich,* 45 Me. 507, 1 Mass. 324.

Why did Congress use the word "deem?" This Court has said that it is proper to construe the meaning of words to effectuate the intent, such meaning to be arrived at not only by consideration of the words themselves but by considering the purposes of the law. *Vermilya-Brown Company, Inc. v. John Joseph Connell,* 335 U. S. 377.

It is well settled that the situs of tangible personal property for purposes of taxation is the place where the tangible personal property is located, and that the state of domicile cannot tax such property when it is located in another state.[4] In the case of intangible property the maxim *mobilia sequuntur personam* is applied where intangible property is incapable of acquiring a situs separate from the domicile of the owner. However, the maxim has never been applied so as to prevent a state from taxing property having an actual situs in that state nor to permit the state of domicile to tax tangible personal property which has acquired an actual situs elsewhere.

"The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of

[4] Union Refrig. Transit Co. v. Kentucky, 199 U. S. 194, Frick v. Pennsylvania, 268 U. S. 473, Curry v. McCanless, 307 U. S. 357.

a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicile of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance." 110 A. L. R. 715.

"It is generally agreed that the maxim, 'mobilia sequuntur personam,' is a fiction adopted for purposes of convenience in fields other than the taxation of the owner's property, and while it is still applicable in the field of taxation where it does not contravene fact, as where because of the intangible character of the property it is incapable of acquiring a situs separate from the domicile of the owner, it is inapplicable where, contrary to the principle it establishes, the property has acquired an actual situs in a jurisdiction other than the domicile of the owner.

"Consequently, notwithstanding the maxim, the power to tax tangible personal property which has acquired an actual permanent situs elsewhere has been denied to the domicile of the owner, as a matter either of constitutional law or of statutory construction; the general theory being that in such a case the domicile does not give protection, which is the consideration for the tax. *Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U. S. 194 * * *." 110 A. L. R. 709.

The word "deem" was no doubt used to prevent the use of this legal fiction of *mobilia sequuntur personam*. This word first appeared in the amendment of 1942 concerning the taxation of income, an intangible, and Congress no doubt meant that the doctrine of *mobilia sequuntur personam* should not be used so as to permit the double taxation of a serviceman's income. The amendment of 1944 used the same wording. Where the same word appears more than once in a statute, it is certainly reasonable to assume that Congress meant the word to have the same meaning. It

also should be noted that the word "solely" is used in the act. The person shall not be deemed to have lost a residence or domicile *solely* by reason of being absent therefrom, or to have acquired a residence or domicile in another state, while, and *solely* by reason of being so absent.

The Colorado Supreme Court held that the word "deemed" meant presumed. This is the usual meaning given to the word by courts, some cases holding that it means a rebuttable presumption,[5] and others holding that it means a conclusive presumption.[6] Whether the presumption is rebuttable or conclusive is not important in this case because the word is used in the negative as "shall not be deemed" and also because of the word "solely" appearing later in the same sentence.

In *Zimmerman v. Zimmerman*, 175 Ore. 585, 155 Pac. (2d) 293, the court said:

> "We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed to have acquired a* residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before the words 'in consequence of' and that such constitutional provisions do not prevent the acquisition of domicile by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

In the present case there is no need to supply a modifying adverb because of the phrase "solely by reason of being absent therefrom." "Solely" means without another; singly; alone. To say that for the purpose of taxation a person's property shall not be "deemed" to be located in a state of non-residence "solely" because the owner of the property is in that state, implies that the presence of the owner, to-

[5] Erickson v. Erickson, 167 Ore. 1, 115 Pac. (2d) 172; Williamson v. Winningham, 199 Okla. 393, 186 Pac. (2d) 644.

[6] Waldron v. People, 84 Colo. 1; Harder v. Irwin, 288 Fed. 402; United States v. Davis, 50 Fed. (2d) 903.

gether with other facts which gave tangible personal property a legal situs for taxation, would justify the imposition of such a tax. That is the present case.

3. LIBERAL CONSTRUCTION.

We do not disagree with the petitioner's statement that "exemptions expressly provided by Congress for federal agencies and instrumentalities will not be whittled away by the courts." However, that statement is based upon the false premise that in this case an exemption has been expressly established by this act of congress. Nor do we disagree with the general statements that this court has said that the Soldiers' and Sailors' Civil Relief Act should be read with friendly eyes and liberally construed to protect the man in military service. However, this Court has also said, in construing this Soldiers' and Sailors' Civil Relief Act, that "the judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A *casus omissus* does not justify judicial legislation." *Ebert v. Poston*, 266 U. S. 548. The petitioner is asking the Court to construe the act so as to supply an exemption which is not stated in the act. He is asking the court to construe the act so as to establish an exemption by judicial legislation when the intention of the legislature was to prevent multiple taxation.

It is also a familiar rule of construction that since the taxing power is necessary to the state, acts limiting such power must be narrowly construed. *Christ Church v. Philadelphia* 24 How. 300, 16 L. ed: 602; *Wiggins Ferry Co. v. City of East St. Louis*, 107 U. S. 365.

In *Bank of Commerce v. Tennessee*, 104 U. S. 493, the following statement appears:

> "That statutes imposing restrictions upon the taxing power of a State, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, is a familiar rule. Against the power nothing is to be taken by inference and presumption. Where a doubt arises as to the existence

of the restriction, it is to be decided in favor of the State."

4. HYPOTHETICAL CASE.

There is no question of double or multiple taxation in this case because the tangible personal property was in the State of Colorado during the entire year of 1948, and there was no contention that the property had been or could have been taxed by the State of Louisiana. Therefore, the question of whether a serviceman might be subject to double taxation is a purely hypothetical one and this Court should not decide this question in this case. *Champlin Refining Co. v. United States*, 329 U. S. 29.

Even if the objection as to double taxation should be good as to some servicemen under other circumstances, the petitioner is not in that class and therefore he cannot raise any question as to double taxation. *Heald v. District of Columbia*, 259 U. S. 114. In *Darnell v. Indiana*, 226 U. S. 390, the Court says:

> "The most serious aspect of this objection is that the statutes of Indiana do not make allowance if a foreign corporation has property taxed within the state. But, as to this, it is enough to say that, however the statutes may be construed in a case of that sort, the plaintiffs in error do not show that it is theirs, and that, if they do not belong to the class for whose sake the constitutional protection would be given, if it did, they cannot complain on that ground."

II. IF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT IS CONSTRUED AS INTENDED TO EXEMPT THE TANGIBLE PERSONAL PROPERTY OF A SERVICEMAN FROM STATE AND LOCAL TAXATION DURING THE TIME SUCH PROPERTY IS ACTUALLY WITHIN THE TAXING JURISDICTION, THEN THE SAID ACT IS UNCONSTITUTIONAL.

It is the respondent's contention that any attempt by congress to extend the mantle of governmental immunity from state taxation to such a remote matter as the private personal property of a service man would be an invalid in-

vasion of the reserved constitutional powers of the States to levy and collect nondiscriminatory taxes.

It is axiomatic that the United States is a government of limited, enumerated and delegated powers [7]; that it cannot exercise any powers not granted by the Federal Constitution either in express words or by necessary implication [8]; and that all others powers are reserved to the states.[9]

It is equally well settled that the power to tax property and persons within their respective limits is original in the states and has never been surrendered [10]; that the states have the attribute of sovereign powers in levying and collecting such taxes [11]; and that the taxing power is fundamental to the existence of the states.[12]

1. A STATE AND ITS POLITICAL SUBDIVISONS HAVE GENERAL POWER TO TAX TANGIBLE PERSONAL PROPERTY LOCATED THEREIN.

It is necessary to keep in mind at all times during the consideration of the problem here involved, that the tax levied by the respondent is a non-discriminatory tax on personal property physically located within the territorial jurisdiction of the respondent. The tax on the property remains the same whether the owner thereof be a resident or a non-resident. A tax is not levied against the owner merely because he is at the time in Colorado, but because the property taxed is actually present in the State of Colo-

[7] United States v. Butler, 297 U. S. 1, 56 Sup. Ct. 312, 80 L. ed. 477; Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 Sup. Ct. 837, 79 L. ed. 1570; Railroad Retirement Board v. Alton Railroad Company, 295 U. S. 330, 55 Sup. Ct. 758, 79 L. ed. 1468.

[8] Carter v. Carter Coal Company, 298 U. S. 238, 56 Sup. Ct. 855, 80 L. ed. 1160; United States v. Butler, 297 U. S. 1, 56 Supt. Ct. 312, 80 L. ed. 477; United States v. Cruikshank, 92 U. S. 542, 23 L. ed. 588.

[9] United States v. Butler, 297 U. S. 1, 56 Sup. Ct. 312, 80 L. ed. 477.

[10] Thomson v. Union Pacific Railroad Company, 9 Wall. (U. S.) 579, 19 L. ed. 792; Lane County v. Oregon, 7 Wall. (U. S.) 71, 19 L. ed. 101; Ward v. Maryland, 12 Wall. (U. S.) 418, 20 L. ed. 449.

[11] Ohio Oil Company v. Conway, 281 U. S. 146, 50 Sup. Ct. 310, 74 L. ed. 775; City of St. Louis v. Wiggins Ferry Company, 78 U. S. 423, 11 Wall. 423, 20 L. ed. 192; Gilman v. City of Sheboygan, 67 U. S. 510, 2 Black. 510, 17 L. ed. 305.

[12] State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527, 51 Supt. Ct. 540, 75 L. ed. 1248.

rado. The petitioner's property was present in the City and County of Denver during the entire taxing year of 1918.

The Supreme Court of the United States has consistently held that tangible personal property such as here involved is taxable by that state within which the property is actually located, regardless of the residence or domicile of the owner thereof.

Although many decisions throughout the years have discussed the theory of taxation of tangible personal property, perhaps the fullest consideration and review thereof is to be found in the case of *Curry v. McCanless*, 307 U. S. 357, decided in 1938. That decision, on its facts deals with the taxation of intangible personal property, but it states the following principles as to taxation of tangible personal property at pages 363-366:

> "That rights in tangibles—lands and chattels—are to be regarded in many respects as localized for purposes of the jurisdiction of a court to make disposition of putative rights in them, for purposes of conflict of laws, and for purposes of taxation, is a doctrine generally accepted in the common law and in other legal systems before the adoption of the Fourteenth Amendment and since. * * *
>
> "The power of government and its agencies to possess and to exclude others from possessing tangibles, and thus to exclude them from enjoying rights in tangibles located within its territory, affords adequate basis for an exclusive taxing jurisdiction. * * *
>
> "Other states have been said to be without jurisdiction and so without constitutional power to tax tangibles if, because of their location elsewhere, those states can afford no substantial protection to the rights taxed and cannot effectively lay hold of any interest in the property in order to compel payment of the tax. See *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194, 202, 50 L. Ed. 150, 152, 26 S. Ct. 36, 4 Ann. Cas. 493; *Frick v. Pennsylvania*, 268

U. S. 473, 489 et seq., 69 L. Ed. 1058, 1062, 45 S. Ct. 603, 42 A. L. R. 316."

2. A State Property Tax Is Not Prohibited by the Federal Constitution Unless it Interferes With the Performance of Federal Functions.

Probably the leading decision of the United States Supreme Court upon the question of implied constitutional immunity from state taxation is *Union Pacific Railroad Company v. Peniston*, 85 U. S. 5, decided in 1873. That case involved the right of Kansas to tax the real and personal property of the Union Pacific Railroad Company actually located in the State of Kansas. For all purposes of the decision, the Supreme Court considered the railroad to have been a corporation organized under a congressional act and acting as an agent of the Federal Government. It was further assumed that although the railroad itself owned the property being taxed, such property was actually being used in connection with railroad's function as an agent of the Federal Government. In affirming the right of Kansas to tax the real and personal property of the railroad located in that State, the Court stated:

(p. 29) "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. * * *

(p. 30-31) "It cannot be that a state tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Con-

stitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which the Federal taxes may be laid. The states are, and they must ever be, co-existent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the states, or prevent their efficient exercise. * * *

(p. 33) "It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue without any corresponding advantage to the United States. * * *

(p. 36-37) "All state taxation which does not impair the agent's efficiency in the discharge of his duties to the government has been sustained when challenged, and a tax upon his property generally has not been regarded as beyond the power of a state to impose. In *Bk. v. Ky.*, 9 Wall, 353, 19 L. ed. 701; when the right to tax national banks was under consideration, it was asserted by us that the doctrine cannot be maintained that banks, or other corporations or instrumentalities of the government, are to be wholly withdrawn from the operation of state legislation. Yet it was conceded that the agencies of the Federal Government are uncontrollable by state legislation, so far as it may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government.

"It is, therefore, manifest that exemption of Fed-

eral agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does it hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers.

"In this case the tax laid upon the property of the Railroad Company precisely as was the tax complained of in *Thompson v. R. Co.* It is not imposed upon the franchise or the right of the company to exist and perform the functions for which it was brought into being. Nor is it laid upon any act which the company has been authorized to do. It is not the transmission of dispatches nor the transportation of United States mails, or troops, or munitions of war that is taxed, but it is exclusively the real and personal property of the agent, taxed in common with all other property in the state of a similar character. It is impossible to maintain that this is an interference with the exercise of any power belonging to the general government; and if it is not, it is prohibited by no constitutional implication."

There is an important distinction to be noted between the facts of the *Union Pacific* case and those in the present case, making our position even stronger here. In the *Union Pacific* case, not only did the Supreme Court consider for all purposes of the decision that the defendant, whose property was located in Kansas and being taxed by Kansas, was acting as an agent of the Federal government, but also that the specific property being taxed was actually used in carrying out its functions as an agent of the Federal Government. In the present case, regardless of whether the plaintiff owner of personal property located in Colorado was an agent

of the Federal Government, there is no doubt that the personal property assessed for taxation by the City and County of Denver was not used in any manner in connection with the petitioner's function as a member of the military service. The property was located in the residence of the plaintiff and used only for his and his family's own individual purposes.

The *Union Pacific* case has been cited innumerable times by the United States Supreme Court since 1873, but we will refer only to a few of the more recent decisions indicating not only that the principle there laid down has remained unchanged but that it has been used as a stepping stone for ever broader principles relative to the power of state taxation.

In *Tabor v. Indian Territory Illuminating Oil Co.* (1936) 300 U. S. 1, the Court held that the State of Oklahoma could tax certain personal property of the oil and gas leases of Indian lands, even though the lessee was acting as a Federal instrumentality, stating at pages 3 and 4:

> "Our decisions distinguished between an non-discriminatory tax upon the property of an agent of government and one which imposes a direct burden upon the exertion of governmental powers. In the former case where there is only a remote, if any, influence upon the exercise of governmental functions, *we have held that a non-discriminatory ad valorem tax is valid, although the property is used in the operations of the governmental agency.* This distinction, recognized Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 436, 4 L. ed. 579, 608, was stated and applied after full consideration in *Thomson v. Union P. R. Co.*, 9 Wall 579, 591, 19 L. ed. 792, 798, and *Union P. R. Co. v. Peniston*, 18 Wall, 5, 31-36, 21 L. ed. 787, 792, 793. Recent illustrations are found in *Alward v. Johnson*, 282 U. S. 509, 514, 75 L. ed. 496, 500, 51 S. Ct. 273, 75 A. L. R. 9, where the tax which was sustained was laid upon property used in operating an automotive stage line between points

in California under a mail carrier's contract; and in *Tirrell v. Johnston*, 293 U. S. 533, 79 L. ed. 641, 55 S. Ct. 238, where a tax known as the 'gasoline road toll' was held to be payable by a rural mail carrier who delivered the mail by means of his own motor vehicle."

The *Union Pacific* case was quoted at great length in 1937 in *James v. Dravo Contracting Co.*, 302 U. S. 134, 153-155, 160, 82 L. ed. 155, 58 Sup. Ct. 216, where it was held that the State of West Virginia could constitutionally tax the gross receipts derived from activities within the borders of the state by one who had contracted with the United States for the construction of certain locks and dams on navigable streams within the state. In holding that the tax did not interfere with the exercise of Federal powers in such a way as to be invalid, the Court stated:

"The question of the taxability of a contractor upon the fruits of his services is closely analogous to that of the taxability of the property of the contractor which is used in performing the services. His earnings flow from his work; his property is employed in securing them. In both cases, the taxes increase the cost of the work and diminish his profits. Many years ago the Court recognized and enforced the distinction between a tax laid directly upon a government contract or an instrumentality of the United States and a tax upon the property employed by an agent or contractor in performing services for the United States. 'Taxation of the agency is taxation of the means, taxation of the property of the agent is not always, or generally, taxation of the means.' *Thompson v. Union P. R. Co.*, 9 Wall. 579, 591, 19 L. ed. 792, 798. In expounding the grounds for the conclusion that the property of the contractor was taxable, the Court envisaged the serious consequences which would follow if immunity were maintained. In *Union Pac. R. Co. v. Peniston*, 18 Wall. 5, 33, 36, 21 L. ed. 787, 792, 793, the Court said: 'It may, therefore, be considered as settled that no constitutional

implications prohibit a State tax upon the property of an agent of the government merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the States in the collection of their necessary revenue without any corresponding advantage of the United States. A very large proportion of the property within the States is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the national services. So are steamboats, horses, stagecoaches, foundries, ship yards, and multitudes of manufacturing establishments. They are the property of natural persons, or of corporations, who are instruments or agents of the General government, and they are the hands by which the objects of the government are obtained. Were they exempt from liability to contribute to the revenue of the States it is manifest the State governments would be paralyzed. While it is of the utmost importance that all the powers vested by the Constitution of the United States in the General government should be preserved in full efficiency, and while recent events have called for the most unembarrassed exercise of many of those powers, it has never been decided that the State taxation of such property is impliedly prohibited'."

In *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, decided in 1937, the question arose whether the recipient of proceeds from an oil and gas lease of Wyoming School Land was subject to Federal income taxes on such proceeds. In holding that the effect of the Federal tax on the state government was so indirect and remote as not to give rise to any constitutional immunity, the Court stated at page 385:

"In numerous decisions we have had occasion to declare the competing principle, buttressed by the

most cogent considerations, that the power to tax should not be crippled by extending the constitutional exemption from taxation to those subjects which fall within the general application of non-discriminatory laws, and where no direct burden is laid upon the government instrumentality and there is only remote, if any, influence upon the exercise of the functions of government.' *Willcuts v. Bunn*, 282 U. S. 216, 225, 75 L. ed. 304, 306, 51 S. Ct. 125, 71 A. L. R. 1260, and illustrations there cited. Thus we have held that the compensation paid by a State or a municipality to a consulting engineer for work on public projects may be subjected to a federal income tax (*Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 524, 70 L. ed. 384, 392, 46 S. Ct. 172) and that the income of independent contractors engaged in carrying on government enterprises may be taxed. *James v. Dravo Contr. Co.* decided December 6, 1937 (302 U. S. 134, ante, 155, 58 S. Ct. 208, 114 A. L. R. 318). We have always recognized that no constitutional implications prohibit a non-discriminatory tax upon the property of an agent of government merely because it is the property of such an agent used in the conduct of the agent's operations and necessary for the agency. *M'Culloch v. Maryland*, 4 Wheat. 316, 436, 4 L. ed. 579, 608; *Union P. R. Co. v. Peniston*, 18 Wall. 5, 33, 21 L. ed. 787, 792; *Alward v. Johnson*, 282 U. S. 509, 514, 75 L. ed. 496, 499, 51 S. Ct. 273, 75 A. L. R. 9."

In 1948 the Supreme Court in *Oklahoma Tax Commission v. Texas Co.*, 336 U. S. 342, again cited the *Union Pacific* decision in support of the following principle at page 350:

> "It has long been established that property owned by a private person and used by him in performing services for the Federal Government is subject to state and local *ad valorem* taxes."

For purposes of the decision the Texas Company was apparently treated as being a Federal Instrumentality in

carrying on the production of oil and gas on Indian lands in Oklahoma under leases approved by the Federal Government. Oklahoma levied a gross production tax in lieu of other ad valorem property taxes. In upholding the constitutionality of such a tax, the Court extended the principle enunciated in the *Union Pacific* case and in referring to the *Mountain Producers'* case, supra, stated at page 365:

> "The Mountain Producers case was not decided on narrow, merely technical or presumptive grounds. Its very foundation was a repudiation of those insubstantial bases for securing broad private tax exemptions, unjustified by actual interfering or destructive effects upon the performance of obligations to or work for the government, state or national. The decision came as the result of experience and of observation of the constant widening of the exempting process from tax to tax to tax.
>
> "Since that decision, as we have noted, the process has been reversed in direction. True intergovernmental immunity remains for the most part. But, so far as concerns private persons claiming immunity for their ordinary business operation (even though in connection with governmental activities), no implied constitutional immunity can rest on the merely hypothetical interference with governmental functions here asserted to sustain exemption."

In the foregoing cases it is clear that the United States Supreme Court has held that there was no implied constitutional immunity from state taxation under the facts of each case for the reason that the state tax did not constitute a burden on or interference with the operations of the Federal government itself. In recent years the Court has even broadened the doctrine by holding that the income of employees of the Federal government may be taxed by the respective states, and that the income of employees of the states may be taxed by the Federal government, thus reversing a long existing immunity. In *Graves v. New York*, 306 U. S. 466, the question arose whether New York could

tax the income of an attorney employed by the Home Owners' Loan Corporation. In holding that such tax was constitutional, even though the employee being taxed was engaged in the performance of a Federal governmental function, the Court stated at page 480:

> "The present tax is a non-discriminatory tax on income applied to salaries at a specified rate. It is not in form or substance a tax upon the Home Owners' Loan Corporation or its property or income, nor is it paid by the corporation or the government from their funds. It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds and not from the funds of the government, either directly or indirectly."

3. CONGRESS CANNOT CREATE A TAX EXEMPTION WHERE THERE IS NO INTERFERENCE WITH OR BURDEN UPON FEDERAL POWERS.

The power of a state to impose taxes is limited by the doctrine of implied constitutional immunity of the means and instrumentalities employed by the Federal Government in carrying on its proper functions, when the state tax interferes with or places a burden upon Federal powers. No contention is made by the petitioner that the private personal property of service men is exempt because of this implied immunity. The contention is rather that there is an express exemption by reason of the Soldiers' and Sailors' Civil Relief Act. It is the respondent's contention that Congress cannot create a broader exemption or immunity than that implied under the constitution, and that a mere Congressional enactment cannot create a burden or interference with Federal Powers where none exists in fact.

It has never been expressly and specifically decided by this Court whether Congress may create an exemption from state taxation which is broader than that afforded by the doctrine of implied immunity. The question was raised by the Court in *Graves v. New York*, 306 U. S. 466, but it was not decided. In that case the majority opinion states:

"Whether its power of granting tax exemptions as an incident to the exercise of powers specifically granted by the Constitution can ever, in any circumstances, extend beyond the constitutional immunity of Federal agencies which courts have implied, is a question which need not now be determined."

And in the same case Mr. Justice Frankfurter in his concurring opinion stated that:

"Whether Congress may, by express legislation, relieve its functionaries from their civic obligations to pay for the benefits of the state governments under which they live is matter for another day."

While the question has not been expressly decided, there are many statements contained in cases which this court has decided, that there is nothing in the Constitution which authorizes the abridgment of the state power of taxation by national legislation.

The case of *County of Lane v. Oregon*, 74 U. S. 71, was a case where the federal law provided that United States notes should be legal tender for the payment of debts, whereas the state law provided that taxes should be paid by the counties in gold and silver coin. The court there says:

"The people of the United States constitute one nation, under one government, and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the State in union there could be no such political body as the United States. * * *

"Now, to the existence of the States, themselves, necessary to the existence of the United States, the power of taxation is indispensable. It is an essential function of government. * * * The Constitution, it is true, greatly changed this condition of things. It

gave the power to tax, both directly and indirectly, to the National Government, and subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect, and of proportion in respect to direct taxes, the power was given without any express reservation. On the other hand, no power to tax exports or imports, except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the States. In respect, however, to property, business and persons within their respective limits, their power of taxation remained and remains entire. It is, indeed, a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. *There is nothing in the Constitution which contemplates or authorizes any direct abridgment of this power by national legislation. To the extent just indicated it is as complete to the States as the like power, within the limits of the Constitution, is complete in Congress.*" (Italics added.)

The *State Tonnage Tax Cases*, 79 U. S. 204, 12 Wall. 204, were cases in which the state levied a tax upon steamboats owned by a resident citizen and used within the state. The court held this tax unconstitutional because it was a duty on tonnage and that the right to collect such a duty was prohibited by the Constitution unless consent of Congress was obtained. However, the court therein makes the following pertinent observations:

"Power to tax, with certain exceptions, resides with the states independent of the Federal government, and *the power, when confined within its true limits, may be exercised without restraint from any Federal authority.* They cannot, however, without the consent of Congress, lay any duty of tonnage, nor can they levy any imposts or duties on imports or exports, except what may be absolutely necessary for executing their inspection laws, as without the consent of Congress they are unconditionally prohibited from exercising any such power. Outside of those prohibitions the power of the states to tax extends to all objects within the sovereign power of the states, except the means and instruments of the Federal government. But ships and vessels owned by individuals and belonging to the commercial marine are regarded as the private property of their owners, and not as the instruments or means of the Federal government, and as such, when viewed as property, they are plainly within the taxing power of the states, as they are not withdrawn from the operation of that power by any express or implied prohibition contained in the Federal Constitution. Nathan v. Louisiana, 8 How. 82; Howell v. Maryland, 3 Gill 14.

"Argument, therefore, to show that they may be taxed as other property belonging to the citizens of the state is hardly necessary, as the opposite theory is indefensible in principle, contrary to the generally received opinion, and is wholly unsupported by any judicial determination. Direct adjudication to support that proposition is not to be found in the reported decisions of this court, but there are several cases which concede that such a tax, if levied by a state, would be legal, and no doubt is entertained that the concession is properly made. Passenger Cases, 7 How. 402; Hayes v. Steamship Co., 17 How. 598, 15 L. ed. 255." (Italics added.)

Union Pacific Railroad Company v. Peniston, 85 U. S. 5, considered the right of Kansas to tax the real and personal property of the Union Pacific Railroad Company which was actually located in the State of Kansas. For all purposes of the decision, the Supreme Court considered the railroad to have been a corporation organized under congressional act and *acting as an agent of the Federal Government.* It held that although the railroad itself owned the property being taxed, such property was actually used in connection with the railroad's function as an agent of the Federal Government. In affirming the right of Kansas to tax the real and personal property of the railroad located in that State, the Court stated:

> (p. 29) "That taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business, and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court. And in thus acknowledging the extent of the power to tax belonging to the states, we have declared that it is indispensable to their continued existence. • • •
>
> (p. 30) "The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised are all equally within the discretion of the legislatures to which the states commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions, or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the National Government. *There is nothing in the Constitution which contemplates or authorizes any direct abridgment of this power by national legislation.* To

the extent just indicated, it is as complete in the states as the like power within the limits of the Constitution is complete in Congress. Such are the opinions we have expressed heretofore, and we adhere to them now. (Italics added.) * * *

In *Home Insurance Company of New York v. City Council of Augusta, Georgia* (1876) 93 U. S. 116, 23 L. ed. 825, the question arose whether Augusta, Georgia could levy a license tax on a New York insurance company doing business in Augusta. In upholding the license tax, the Court stated at pages 122, 123:

"In the License Cases, 5 Wall. 462, 18 L. ed. 497, the nature of the tax exaction here in controversy was carefully considered by this court. There the revenue laws of the United States required payment in advance to be made for permission to carry on the business of selling liquor, and of selling lottery tickets. It was provided that no license so granted, or special tax so laid, should be construed to authorize any business within a State forbidden by the laws of such State, or so as to prevent the taxation by the State of the same business.

"This court held that the payment required was a special tax, levied in the manner prescribed; that the penalty provided was a mode of enforcing its payment; and that the license, when issued, was only a receipt for the tax. It was held further, that, as regards the reservation of power in favor of the States, the result would have been the same if the Acts of Congress had been silent upon the subject. This was necessarily so, because the objects taxed belonged to the internal commerce of the States, and were within their police power, and the right of Congress and the States to tax was concurrent. *Congress could, therefore, no more restrict the power of the State than the State could restrict that of Congress.*" (Italics added.)

Thus, although a Congressional Act limiting the power of the state or its political subdivisions was not involved specifically, the Court did state that Congress could not in such a situation have restricted the power of the state to tax.

That Congress cannot restrict the sovereignty of a state where action by the latter has not interfered with the power of the Federal Government was again affirmed in *Ashton v. Cameron County Water Improvement Dist. No. 1*, 298 U. S. 513, 80 L. ed. 1302, 56 S. Ct. 892, decided in 1936. That case involved the question whether an irrigation district organized under the laws of Texas could avail itself of the Federal Bankruptcy Act specifically providing therefor. Although apparently the actual proceeding involved was voluntary bankruptcy, the Court stated that if a voluntary proceeding may be permitted, so may involuntary ones, and in holding the Federal Statute invalid, said at page 531:

> "Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted. United States v. Butler, decided January 6, 1936, 297 U. S. 1, ante, 477, 56 S. Ct. 312, 102 A. L. R. 914. The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; *it cannot be taken away by any form of legislation.* See United States v. Constantine, 296 U. S. 287, ante, 233, 56 S. Ct. 223.
>
> "Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. *But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair State powers—pass laws inconsistent with the idea of sovereignty.*" (Italics added.)

The United States is a government of delegated, enum-

erated, and limited powers. The United States Constitution gives to Congress the power to provide for the common defense and to raise and support armed forces. All other powers not expressly granted to the Federal Government are reserved to the states.

Is it necessary and proper for Congress to exempt servicemen from a non-discriminatory *ad valorem* tax upon personal property located at their place of temporary residence when no such exemption was given at their place of permanent residence? In the present case, the property had been located in Denver for all of the year 1948. Taxes had not been, and could not have been, levied by the state of permanent residence. The man in service and his family had had the benefit during all that year of the protection and services furnished by the City and County of Denver through use of its streets, parks, schools, police protection, fire protection, and other services. He had paid no other state for these services and there is no question of double payment or double taxation. The collection of such a tax from the service man would have no effect upon the providing of a common defense or the raising and supporting of armed forces. It could not place any burden upon the Federal Government. Yet, there can be no doubt but what such an exemption from taxation would affect the operation of the state and local governments. In the City and County of Denver there reside many thousands of persons who are employed by the army and navy installations, government hospitals, Post Office Department, Treasury Department, Department of the Interior, and many other departments of the United States Government. If Congress could exempt these employees from the *ad valorem* taxes on property, state sales tax, liquor tax, gasoline tax, and other taxes which supply the funds for the existence of the states, the state governments would be paralyzed, as pointed out in the *Union Pacific* case, without any corresponding advantage to the United States. There can be no doubt but what exemption from these taxes, where there is no interference with federal powers, would be an unlawful invasion of the state's sovereignty.

The petitioner passes over this important constitutional question in a couple of paragraphs in his brief by stating that there can be no doubt of Congress' power to exempt servicemen by legislation of this character as an incident of its war and defense powers, and that "the general power to provide tax exemptions *reasonably related to the performance of Federal functions* has been announced and confirmed in *Carson v. Roane-Anderson Co.*, 342 U. S. 233-234; *Pittman v. Home Owners Corp.*, 308 U. S. 21, 32-33; *Federal Land Bank v. Bismarck Co.*, 314 U. S. 95, 102-104; *Maricopa County v. Valley Bank*, 318 U. S. 357, 361; *Board of Commissioners v. Seber*, 318 U. S. 705, 715, 719." (Italics supplied.)

It should be noted that these cited cases were all cases in which an agency or instrumentality of the Federal government was directly and substantially affected by the imposition of the state tax—not cases where an employee might be affected by the tax. They were also taxes upon the instrumentality or means by which the instrumentalities or agencies carried on their governmental functions. They were not, as in the present case, taxes upon the private property of employees, which property was not used in any way in the furtherance of the war effort.

Carson v. Roane-Anderson Co., was a case where a sales tax was imposed upon a contractor under a cost-plus contract with the Atomic Energy Commission. The payment of such a tax would necessarily be borne by the governmental agency and would constitute a burden upon that agency. Such a sales tax is also quite different from a property tax. The Court in that case merely says that "The Constitutional power of Congress to protect any of its agencies from state taxation (citing *Pittman v. Home Owners Corp., supra*, and *Federal Land Bank v. Bismarck Co., supra*) has long been recognized as applying to those with whom it has made authorized contracts." It is interesting to note that the Atomic Energy Act which provided the tax exemption also provided for a payment to be made in lieu of taxes thereby denied to the state government.

Pittman v. Home Owners Loan Corp., supra, was a case in which a recording tax was involved and the Federal Act expressly declared the Home Owners Loan Corporation to be an instrumentality of the United States. It would have no doubt been declared to be an instrumentality of the United States without such a declaration, and as such entitled to implied immunity.

Federal Land Bank v. Bismarck Co., supra, is a case in which the Court stated that any exercise of the powers of the Federal Government was a governmental function and that the government could protect that instrumentality, the Federal Land Bank, from state and local taxation.

Maricopa County v. Valley Bank, supra, was a case in which the respondent was a national banking association incorporated under the laws of the United States. It issued preferred stock which was purchased by the Reconstruction Finance Corporation. Congress provided by statute that shares of preferred stock held by the R. F. C. should not be subject to state taxation. The Court in this case says that Congress has the power to determine whether and to what extent its instrumentalities such as the R. F. C. shall be immune from state taxation.

Board of Commissioners v. Seber, supra, presented the question of whether lands held by Indians, subject to restrictions against alienation and encumbrances without the approval of the Secretary of Interior, were exempt from Oklahoma real estate taxes. The Secretary of the Interior had purchased the land out of restricted royalties from an oil and gas lease and had conveyed the land, subject to the restrictions on alienation and encumbrances, to the Indian. The Court held that these lands were instrumentalities of the United States by which it provided for the welfare and education of its Indian wards and that the lands were immune from taxation.

In four of these cases cited by the petitioner an instrumentality of the Federal Government was definitely involved—the Atomic Energy Commission, the Home Owners Loan Corporation, the Federal Land Bank, and the Re-

construction Finance Corporation. In the fifth the Court said that the land was an instrumentality of the Government by which the United States provided for the welfare of its Indian wards.

The private personal property of a member of the Armed Forces could not be an instrumentality of the Federal Government which could be immune from state taxation, either impliedly or by express act of Congress.

We submit that under the tests theretofore established by this Court, the instrumentalities involved in all five of these cases would have been exempt by implication without express legislative enactment. All of the subjects of the tax were governmental instrumentalities and not mere employees. And all of those taxes would have placed a burden upon the Federal Government and interfered with its express powers. They were not, as in the present case, taxes upon the private property of employees, which property was not used in any way in the performance of their governmental duties.

Taking at its face value the statement of the Petitioner that Congress has "the general power to provide tax exemptions *reasonably related to the performance of federal functions,*" we submit that the exemption of private personal property of a man in the armed forces does not even meet the test of the rule stated by the Petitioner, for the reason that such an exemption of privately owned personal property is not reasonably related to the exercise of the war and defense powers.

Under any of the tests given in the cases determining the implied immunity of federal instrumentalities from state taxation, a non-discriminatory tax upon the personal property belonging to a serviceman and actually located within a state and used by him and his family therein for the whole of the calendar year, would not be immune from state taxation by that state. Such a tax would not interefere with the powers of, nor place any direct burden upon, the Federal Government; such a tax is a tax upon property and not a taxation of the means employed in performing services

for the United States; such a tax is upon property which was not used in any manner in the performance of any governmental function; such tax is upon the property of an employee rather than upon the property of any governmental agency or instrumentality; and such a tax is not paid by the Government from its funds but it is paid from the private funds of the employee.

These same tests should be applied in determining the power of Congress to grant specific immunity from state taxation to governmental instrumentalities.

CONCLUSION

The judgment of the Supreme Court of Colorado should be affirmed.

Respectfully submitted,

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APPENDIX

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888 54 Stat. 1178:

> Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

Senate Report No. 959, 78th Cong., 2d Sess:

> The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.
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> The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on

residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subject to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Report of House Military Affairs Committee (1944):

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as to income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.